

**H.R. 2358, “ELECTRICITY RELIABILITY AND  
FOREST PROTECTION ACT”**

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**LEGISLATIVE HEARING**

BEFORE THE  
SUBCOMMITTEE ON WATER, POWER AND OCEANS  
OF THE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

Wednesday, May 20, 2015

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**LEGISLATIVE HEARING ON H.R. 2358, TO  
AMEND THE FEDERAL LAND POLICY AND  
MANAGEMENT ACT OF 1976 TO ENHANCE  
THE RELIABILITY OF THE ELECTRICITY  
GRID AND REDUCE THE THREAT OF  
WILDFIRES TO AND FROM ELECTRIC  
TRANSMISSION AND DISTRIBUTION FACILI-  
TIES ON FEDERAL LANDS BY FACILITATING  
VEGETATION MANAGEMENT ON SUCH  
LANDS, "ELECTRICITY RELIABILITY AND  
FOREST PROTECTION ACT"**

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**Wednesday, May 20, 2015  
U.S. House of Representatives  
Subcommittee on Water, Power and Oceans  
Committee on Natural Resources  
Washington, DC**

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The subcommittee met, pursuant to call, at 2:17 p.m., in room 1324, Rayburn House Office Building, Hon. John Fleming [Chairman of the Subcommittee] presiding.

Present: Representatives Fleming, McClintock, Lummis, Gosar, LaMalfa, Newhouse, MacArthur, Huffman and Torres.

Also Present: Representative Zinke.

**STATEMENT OF THE HON. JOHN FLEMING, A REPRESENTA-  
TIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Dr. FLEMING. The Subcommittee on Water, Power and Oceans will come to order.

The Water, Power and Oceans Subcommittee meets today to hear testimony on a discussion draft entitled, the "Electricity Reliability and Forest Protection Act."

Before we begin, I ask unanimous consent to allow the sponsor of the bill, Congressman Zinke from Montana, to participate in our hearing today. Hearing no objection, so ordered.

We will begin 5-minute opening statements by myself and the Ranking Member, Congressman Huffman of California. And I yield myself 2 minutes for my part of the opening statement.

Our hearing today is on bipartisan, common-sense legislation offered by Mr. Zinke of Montana and Mr. Schrader of Oregon that promotes Federal agency consistency and timely decisionmaking. The Electricity Reliability and Forest Protection Act is simply about helping two Federal agencies collaborate with electric utilities in order to avoid blackouts and forest fires on Federal lands. While the bill's sponsors are from the West, this bill is national in

scope since the U.S. Forest Service has 155 national forests throughout our country.

In my home state of Louisiana, for example, the Kisatchie National Forest includes over 15,000 acres of electricity right-of-ways maintained by seven utilities. And as we learned from the 1996 and 2003 tree-caused blackouts, electricity outages have far greater geographic impacts than an instigating tree.

As a result, I am going to go ahead and yield the remainder of my time to Mr. Zinke.

[The prepared statement of Dr. Fleming follows:]

PREPARED STATEMENT OF THE HON. JOHN FLEMING, CHAIRMAN, SUBCOMMITTEE ON  
WATER, POWER AND OCEANS

Our hearing today is on bipartisan, common-sense legislation offered by Mr. Zinke of Montana and Mr. Schrader of Oregon that promotes Federal agency consistency and timely decisionmaking.

The “Electricity Reliability and Forest Protection Act” is simply about helping two Federal agencies collaborate with electric utilities in order to avoid blackouts and forest fires on Federal lands.

While the bill’s sponsors are from the West, this bill is national in scope since the U.S. Forest Service has 155 national forests throughout our country. In my home state of Louisiana, for example, the Kisatchie National Forest includes over 1,500 acres of electricity rights-of-way maintained by seven utilities. And as we learned from the 1996 and 2003 tree-caused blackouts, electricity outages have far greater geographic impacts than an instigating tree.

The Energy Policy Act of 2005 gave Federal land agencies the authority to allow electric utilities managing vegetation on a right-of-way to comply with Federal reliability standards. Yet, since then, this committee has held two hearings—in 2006 and 2014—where witnesses criticized both Republican and Democrat administrations, respectively, for not allowing vegetative management policies to be carried out on a consistent and timely basis.

Electric transmission lines represent a critical part of our national infrastructure, and while there have been instances of cooperation between Federal land agencies and utilities, the inability of the agencies to be consistent is compromising electricity reliability and affordability and our forest health. This is an avoidable problem and this bill will help promote common sense and Federal accountability. I look forward to moving this bill and now yield the rest of my time to the bill sponsor and our committee colleague, Mr. Zinke.

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**STATEMENT OF THE HON. RYAN K. ZINKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA**

Mr. ZINKE. Thank you, Chairman Fleming, and thank you for the opportunity to speak about House Resolution 2358, the Electricity Reliability and Forest Protection Act. This bill is a win/win for Montana, for the co-ops, for the collaborative effort, and it is bipartisan. In Montana, our co-ops service about 40 percent of the state. And it corrects, as was pointed out, a Federal inconsistency and indecision that governs the way our local power companies can provide and cannot service their lines.

Currently, if a tree falls down on a power line that is on Federal land, even though it is through a prescribed easement, the crews have to go through a regulatory labyrinth that in some cases can take months, if not years. Multiple testimony throughout the last few months has identified that the West, and the rest of the country, has an enormous problem with forest fires; and it is a public-safety issue. Already in Montana, we have had about 38,000 acres burned, which has cost about \$1.8 million and has put in jeopardy homes and public safety.

Chairman Fleming, as you noted, this bill doesn't just help out those of us in the West. It is an issue of forest safety and national safety and security for our entire country. A lot of the power lines go through Federal land and we need to reduce the bureaucracy. And certainly, we should not hold our co-ops hostage over what has been a Washington problem in negligence and gridlock. I think this is a meaningful bill.

Mr. Chairman, I would also like to introduce Mark Hayden from the Missoula Electric Cooperative. Before I yield back my time, I would just like to point out that Mr. Hayden was the general manager at Missoula Electric Cooperative, which provides electric service to nearly 15,000 members in western Montana and eastern Idaho. He is an expert in this field and, Mark, I appreciate you being here. It is a long way from Montana both culturally and distance, and I hope you find your stay worthy.

And last, Mr. Chairman, I would like to enter for the record letters of support from the NRECA, the APPA, and the EEA, as delivered. Mr. Chairman, I yield back my time.

Dr. FLEMING. Hearing no objection, so ordered.

[The prepared statement of Mr. Zinke follows:]

PREPARED STATEMENT OF THE HON. RYAN K. ZINKE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MONTANA

Thank you, Chairman Fleming, and thank you for the opportunity to speak about H.R. 2358, the Electricity Reliability and Forest Protection Act.

This bill is a win for Montana and our co-ops, who service 40 percent of the state. It corrects Federal inconsistency and indecision that governs the way our local power providers can, and cannot, service their lines on federally owned land. Currently, if a tree falls on a power line that is on Federal land, utility crews must go through regulatory back flips just to remove the tree. This can take months and in some cases more than a year, as Mr. Mark Hayden from Missoula notes in his testimony. It should not take an Act of Congress to remove a tree. Conditions in our forests are already dangerous. Inaction means disaster.

Already this wildfire season, Montana has seen over 38,000 acres burned, costing more than \$1.8 million. Montanans deserve reliable electric service to keep their lights on and an accountable and consistent Federal Government that will reduce power-line caused fires.

As Chairman Fleming noted, this bill doesn't just help those of us out West. It's an issue of forest safety and national security for our entire country when a hazardous tree falls onto power lines. When the U.S. Forest Service or Bureau of Land Management doesn't let them address the problem, our entire power grid is jeopardized. We should be doing whatever we can to empower our co-ops, not blame them for government negligence. H.R. 2358 helps to meaningfully address these issues.

Before I yield back my time, I'd like to briefly welcome a fellow Montanan, Mark Hayden, who is here to testify this afternoon.

Mr. Hayden is the General Manager at the Missoula Electric Cooperative (MEC), which provides electric service to nearly 15,000 members in western Montana and eastern Idaho. Prior to joining the MEC, he was the Assistant General Manager of Dunn Energy Cooperative in Menomonie, Wisconsin, and the General Manager for its propane subsidiary DEC Energy, Inc.

Mark, I appreciate you being here today. You, along with other members of the Montana Electric Cooperatives Association, know best why this bill is an important step forward for our state and country.

[Letters submitted by Mr. Zinke follow:]

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,  
ARLINGTON, VA,  
MAY 20, 2015.

Hon. ROB BISHOP, *Chairman,*  
*House Committee on Natural Resources,*  
*1324 Longworth House Office Building,*  
*Washington, DC 20515.*

DEAR CHAIRMAN BISHOP:

I write in support of H.R. 2358, the Electricity Reliability and Forest Protection Act of 2015, introduced by Representatives Ryan Zinke and Kurt Schrader. This common-sense legislation provides opportunities for electric cooperatives to better enhance safety and ensure the delivery of affordable, reliable electricity to their members.

As you know, the National Rural Electric Cooperative Association is the national service organization that represents the nation's more than 900 private, not-for-profit, consumer-owned electric cooperatives, which provide service to 42 million people in 47 states. Rural electric cooperatives across the country are often located in areas on or near public lands. Therefore, moving electricity from generation facilities to customers frequently requires transmission lines to cross land that is federally managed. Access to these lines is essential to perform routine maintenance, upgrades, and equipment replacement. Further, vegetation management is of utmost importance to meet state and federal safety requirements and to ensure electric reliability for our member-owners.

The Electricity Reliability and Forest Protection Act would give electric utilities more consistent procedures and a streamlined process in order to better manage utility rights of way. The bill allows sensible procedures that would cut through federal bureaucratic red tape and reduce delays that currently impede our ability to adequately manage dangerous vegetative overgrowth in existing utility rights of way. Such delays not only add to the costs our electric consumers pay for their electricity, but present a major threat to human safety, wildlife habitat, and the reliable delivery of electricity.

In short, the Zinke-Schrader bill would be a useful tool for allowing prompt, critical access to utility rights of way and responding to emergency conditions to help prevent wildfire, power outages, and threats to the electric grid. We urge the committee to swiftly move forward on this important legislation.

Sincerely,

JO ANN EMERSON,  
*Chief Executive Officer.*

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AMERICAN PUBLIC POWER ASSOCIATION (APPA),  
ARLINGTON, VA,  
MAY 19, 2015.

Hon. ROB BISHOP, *Chairman,*  
*House Committee on Natural Resources,*  
*1324 Longworth House Office Building,*  
*Washington, DC 20515.*

DEAR CHAIRMAN BISHOP:

On behalf of the American Public Power Association (APPA), I am writing in support of H.R. 2358, the Electricity Reliability and Forest Protection Act introduced by Congressmen Ryan Zinke (R-MT) and Kurt Schrader (D-OR). H.R. 2358 would amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on federal lands by facilitating vegetation management on such lands. This legislation is extremely important to ensuring transmission- and, in some cases, distribution-system reliability and security. As the trade association representing over 2,000 not-for-profit, community owned electric utilities in 49 states, whose purpose is to provide affordable, reliable electricity with



the appropriate environmental stewardship, this legislation is particularly welcome to us.

As noted in the Department of Energy's Quadrennial Energy Review (QER), investigations following the August 14, 2003, Northeast blackout revealed that a primary cause of the blackout was flashover caused by inadequate vegetation management (tree pruning and removal). The Federal Energy Regulatory Commission (FERC) found that vegetation management approvals on federally managed rights-of-way are particularly problematic due to permitting and environmental requirements that are inconsistent and time-consuming. In the case of federal lands, the inability of utilities to remove vegetation beyond their easement presents a major obstacle in protecting the electrical infrastructure. Not only must long-reaching tree branches be pruned to avoid contacts with transmission lines, but brush and other ground vegetation must be periodically cleared from the base of transmission towers to minimize the effects of fires.

H.R. 2358 will provide the consistency and flexibility needed by APPA's members to treat danger trees and facilitate access to and clearance of these transmission lines and associated facilities, while also protecting our members from liability when the appropriate federal government agencies fail to allow our members the ability to manage the vegetation in and around the electricity rights-of-way. Additionally, the legislation will seek to develop a program to train the appropriate federal employees in vegetation management practices and procedures to prevent the problems laid out by FERC.

We understand that you, along with Reps. Zinke and Schrader are committed to seeing this legislation reach President Obama's desk to be signed into law. Thank you for your efforts and we look forward to continuing our work together on this legislation as you move through the legislative process.

Sincerely,

SUSAN N. KELLY,  
*President & CEO.*

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EDISON ELECTRIC INSTITUTE,  
WASHINGTON, DC,  
MAY 19, 2015.

Hon. ROB BISHOP, *Chairman,*  
Hon. RAÚL GRIJALVA, *Ranking Member,*  
*House Committee on Natural Resources,*  
*Washington, DC 20515.*

Hon. JOHN FLEMING, *Chairman,*  
Hon. JARED HUFFMAN, *Ranking Member,*  
*House Subcommittee on Water, Power and Oceans,*  
*Washington, DC 20515.*

DEAR CHAIRMEN BISHOP AND FLEMING AND RANKING MEMBERS GRIJALVA AND HUFFMAN:

On behalf of the Edison Electric Institute (EEI), I am writing in support of H.R. 2358, the Electricity Reliability and Forest Protection Act, introduced by Representatives Zinke and Schrader. We applaud you for proceeding quickly to a legislative hearing and your intent to advance H.R. 2358 to the floor this year.

EEI is the association of U.S. investor-owned electric utilities, international affiliates and industry associates worldwide. Our members provide electricity for 220 million Americans, directly and indirectly employ more than one million American workers, and operate in all 50 states and the District of Columbia. With more than \$90 billion in annual capital expenditures, the electric utility industry is responsible for providing reliable, affordable, and increasingly clean electricity that powers the economy and enhances the lives of all Americans.

Managing and clearing vegetation within or near rights-of-way (ROWs) presents difficult challenges, especially where such ROWs are located on federal land. While integrated vegetation management (IVM) and utility vegetation management (UVM) requirements impact "less than a fraction of a percent" of overall federal lands, the consequences of not effectively managing the ROWs and power line corridors can be significant and catastrophic. Failure to manage vegetation can cause wildfires, spark outages, and jeopardize the transmission facilities themselves. As a con-

sequence, electric utilities are required under North American Electric Reliability Corporation (NERC) reliability standard FAC-003-3 to prevent vegetation from growing into and falling onto transmission lines, and there are state and local safety and fire requirements as well.

Even so, obtaining timely approvals from the federal land management agencies to perform IVM and conduct the operation and maintenance work necessary to meet reliability standards, assure a proper functioning of the grid, and reduce the potential risk of catastrophic fire is a constant challenge. This not only includes management within the ROW, but extends to “hazard trees” growing outside the permitted ROW. In most cases, a federal permit for vegetation management does not cover off-ROW trees, even if such trees pose a risk to the power lines, human life or other property. In spite of this, utilities are often held liable for fire suppression costs and damages when the off-ROW hazard trees cause a wildfire. In recent years, utilities have literally paid out millions of dollars to cover these costs.

We believe that H.R. 2358 will provide an avenue for electric utilities to obtain more timely approvals while respecting the needs of the federal land agencies to appropriately manage their respective lands. The bill provides direction to the Secretaries of Agriculture and the Interior to expedite permit reviews; move, where possible, away from case-by-case approvals; and support the long-term, cost-effective, and timely management of facilities and vegetation within and adjacent to the ROW. IVM is an important tool for the sustainable management of vegetation and the provision of quality habitat for pollinators and wildlife.

We appreciate that H.R. 2358 recognizes the inequities of imposing strict liability on utilities for the consequences of decisions made elsewhere. We would like to work with the Committee to address liability issues associated with off-ROW work that is the responsibility of the land agencies, but which prevent utilities from partnering with the land agencies to complete that work to their mutual benefit.

EEI believes that H.R. 2358 can work to the benefit of the federal land agencies and electric utilities to assure the timely completion of work critical to maintaining a reliable grid and catastrophic wildfire risk reduction, and in manner that is efficient for all parties.

Sincerely,

THOMAS R. KUHN,  
*President.*

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Dr. FLEMING. The Chair now recognizes Mr. Huffman for 5 minutes for an opening statement.

**STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. HUFFMAN. Thank you, Mr. Chairman. Thanks for the witnesses joining us today, and thanks for calling this hearing. Forest health and reliable power transmission are two areas where I think there is substantial room for bipartisan agreement and I appreciate very much all of us devoting some time to this important issue. Now for the most part, I think trees and power lines have been good neighbors, you might say. Electric utilities and rural cooperatives have been installing and maintaining thousands of miles of power distribution lines for decades through National Forest lands, BLM lands, but as we have seen over the years, sometimes trees and brush can cause serious hazards when they come into contact with power lines. We, obviously, need to prevent that to the greatest degree that we can.

It has been mentioned that there are some tremendous blackouts that have occurred because of this. Back in the 1990s on a hot August day, a power line came into contact with a high power load line—came into contact with a tree because an orchard tree had grown too high. The result of that was millions of people through-

out Canada and 10 western states without power; 7 million people to be precise. In 2003, we had a similar blackout in the Northeast that affected 50 million people without power, cost billions of dollars in lost productivity and in both cases, again, investigators found that it was a tree coming into contact with high-voltage lines.

And these problems aren't even counting forest fires that often result from these kinds of contacts, and the extreme damage and public safety problems that that presents. So it is in everyone's interest to prevent that kind of harm that can happen from inadequate vegetation management along these utility corridors.

The question is, what can we do to address the problem to improve vegetation management on these rights-of-way? And I think the first thing we need to be clear about is addressing the inadequate funding for Federal land management agencies that is absolutely a part of this problem. We keep talking a lot about the symptoms of this situation. We had a hearing earlier today that talked about the problem of the deferred maintenance backlog on BLM and Forest Service lands, again, caused by underfunding these agencies. Today we are talking about some risks and liabilities and problems that are also manifestations of this chronic underfunding, and fire borrowing is really the poster child of this problem.

This is the practice of transferring funds away from resource management accounts to fight wildfire. This is the root cause of the problem of our Federal agencies being unable to do the many additional things we are asking of them. In Fiscal Year 2015 wildfire funding was 52 percent of the Forest Service's budget. Just back in 1990 that amount was only 13 percent of the Agency's budget.

So the trend is completely unsustainable. When you are spending more than half of your budget on wildfire management, you are obviously squeezing out other critical programs and needs. It has left the Forest Service's field offices without adequate resources and manpower to carry out all kinds of management activities, but that certainly includes processing right-of-way-related requests with neighbors and partners such as the utilities that we are going to hear from today.

That is why I, and several of my colleagues, support legislation to allow responses to large forest fires to be funded like other national disasters. This is a bipartisan solution that we are putting forward. Doing this would free up resources to help us address this problem.

Now, the second part of this is that I think moving from a case-by-case special use permitting situation to a more systemic planning approach could absolutely improve coordination and consistency. So that could be a good thing. But this draft legislation, we believe, is not quite ready for prime time. One of the problems is that some of its provisions could have unintended consequences that could damage natural resources on public lands and not improve consistency in coordination.

For example, a provision allows utilities the option to develop and submit plans to Federal agencies, but it doesn't require that. So you could have the challenging situation of some utilities having plans, others not having plans, and that is not the kind of coordina-

tion and consistency that we need. The draft also includes a provision that would dramatically redefine danger tree to the point that it would potentially include a large swath of land and trees outside of a narrow right-of-way, and I think we need to be very careful with unintended consequences for that provision, among others. There is a provision that transfers liability for wildfire damage, loss, or injury from utilities to the taxpayer. We are going to need to look very closely at that.

But the bottom line, Mr. Chairman, is I think we have lots of room to work together on this important issue. I hope we can address that fire borrowing issue where there is so much bipartisan support. And I look forward to the hearing today.

[The prepared statement of Mr. Huffman follows:]

PREPARED STATEMENT OF THE HON. JARED HUFFMAN, RANKING MEMBER,  
SUBCOMMITTEE ON WATER, POWER AND OCEANS

Mr. Chairman, thank you for calling this hearing today. Forest health and reliable power transmission are two areas where there is substantial room for bipartisan agreement, and I appreciate you devoting time to this important issue.

For the most part, trees and power lines have been good neighbors. Electric utilities and rural cooperatives have been installing and maintaining thousands of miles of power distribution lines for decades through National Forest and BLM lands. But, as we have seen over the years, sometimes trees and brush can cause serious hazards when they come into contact with power lines.

Back in the mid-1990s during a very hot August day, a power line with a high power load sagged into an orchard tree that grew too high. The line blew, causing an outage that extended to Canada and 10 western states. Seven million people and businesses lost power. In 2003, a similar blackout in the Northeast left 50 million people without power and cost billions of dollars in lost productivity. In both cases, investigators found that the outages were caused by trees coming into contact with high-voltage lines. Trees making contact with power lines have also sparked numerous forest fires, causing the destruction of thousands of acres and endangering many lives.

Clearly it is in everyone's interest to prevent the harm that can be caused by inadequate vegetation management along our utility corridors. Everybody loses when there is a power failure or forest fire. When forest fires are sparked or when the power is out, people's lives are endangered and we lose control of the technology that makes our society function. So, what can we do to improve vegetation management on rights-of-way?

First, I think it's clear we must do something to address the inadequate funding for Federal land management agencies. 'Fire borrowing', the practice of transferring funds away from resource management accounts to fight wildfires, is the root cause of this funding deficiency. In Fiscal Year 2015, wildfire funding was 52 percent of the Forest Service's budget. In the 1990s, wildfire funding accounted for approximately 13 percent of the agency's budget. It is clear this trend is unsustainable. Spending more than half of the Forest Service's budget on wildfire management squeezes out funds needed for other critical Forest Service programs and has left field offices without adequate resources and manpower to carry out many management activities, including processing right-of-way-related requests.

That is why I and several of my colleagues support legislation to allow responses to large forest fires to be funded like other national disasters. Doing this would free up resources and help expedite approval of right-of-way maintenance, while also ensuring that national forestry funding can be used to fulfill its original purpose—ensuring our Nation practices good stewardship of our national forests for the health and benefit of all Americans.

Second, I think moving from case-by-case special use permitting to a more systematic process that considers rights-of-way across all U.S. public lands and requires upfront planning could do a great deal to improve coordination and consistency in vegetation management and other right-of-way maintenance. However, the draft legislation we are discussing today takes a different approach, and some of its provisions could have unintended consequences that could damage natural resources on U.S. public lands and not improve coordination and consistency.

For instance, the discussion draft gives utilities the *option* to develop and submit plans to U.S. public land management agencies for right-of-way maintenance activi-

ties, but does not require the plans, creating a situation in which inconsistencies are likely to persist. Further, land managers would not be able to modify a requirement in the bill that these plans meet local and state electricity reliability and fire safety standards—effectively giving control over rights-of-way on U.S. public lands to the states and localities.

The discussion draft also contains a provision that allows utilities to remove “danger trees”—trees that could damage infrastructure or cause fires if they fall. The bill defines a danger tree as any tree inside or outside the right-of-way that would come within 10 feet of a power line or related infrastructure if it fell. This is a significant expansion of current authority, which defines a danger tree as one that is in imminent danger of falling onto a line. This new authority would technically allow for the removal of wide swaths of forest on either side of a right-of-way, regardless of potential environmental damage.

The bill also transfers liability for wildfire damage, loss, or injury—including the costs of fire suppression—from the utilities to the U.S. Government. This would further stress agency resources and make the right-of-way management process even less efficient.

Mr. Chairman, it is important that U.S. public land managers work with utilities to ensure that each right-of-way is cleared of debris and there is sufficient clearance space for falling trees. I also believe there are things we can do to improve coordination and expedite approval of right-of-way maintenance. I hope this hearing can help elucidate where Federal agencies, utilities, and co-ops are succeeding and where improvement is needed. There are common-sense solutions to many of these challenges and I look forward to working with you, Mr. Chairman, and the rest of the committee on solutions that improve public safety, transmission reliability, and the health of our forests.

Thank you, I yield back.

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Dr. FLEMING. Great. I thank the Ranking Member.

The Chair now recognizes Dr. Gosar, Vice Chair of the Subcommittee, for 5 minutes.

**STATEMENT OF THE HON. PAUL A. GOSAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. Thank you, Mr. Chairman. My home state of Arizona is on the frontline of the issues being discussed today. The hearing on the bill before us couldn’t be better timed. I thank the committee—my committee’s colleagues Mr. Zinke and Mr. Schrader for their leadership on this bill.

The Arizona Public Service Company testified before this committee last year on the very need for the legislation being considered today. The company which serves 11 of Arizona’s 15 counties, has power lines crossing 5 national forests, 4 Bureau of Land Management districts, 4 wildlife refuges, 11 National Park Service units, and 3 national monuments administered by the BLM.

It is abundantly clear they are at the forefront of these issues. The company’s witness, Mr. Mike Neal, who manages forestry and special programs, had the unique opportunity to testify both during the second Bush administration and the current administration on the same topic with the same concerns. Little had changed in between his testimonies, prompting Mr. Neal to conclude that the legislation was necessary to, “ensure that electric utilities are able to manage power line right-of-ways on Federal land efficiently and in a timely manner.” I couldn’t agree more.

This is common-sense legislation designed to bring consistency, accountability, and fairness to a system that is none of the above. Last year’s testimony and this hearing’s witness examples are replete with examples that resemble something out of a top 10

David Letterman's list of government red tape, endless delays, and inconsistencies. As opposed to being funny, though, this is a serious matter. This is as real as it gets.

On one hand, we had Federal reliability standards that can lead a utility to be fined up to \$1 million a day. But on the other hand, we have Federal land agencies that are circumventing utilities for meeting those standards. In the meantime, the risks of catastrophic fires increases from such government inaction. A witness from Wyoming said last year that it was simply luck that beetle-killed trees didn't fall on power lines during years of bureaucratic delay.

As we have noticed in Arizona, our forests are not so lucky when it comes to catastrophic fires. To make matters worse, the Federal land agencies are constantly putting rate payers at risk by having them be liable for hazardous and dangerous trees outside of the right-of-way that threaten power lines in the forests around them.

As APS Mike Neal had said, "In recent years utilities have literally paid out millions of dollars to cover fire suppression and damage cost. Utilities believe the Federal agencies as the official land managers have the responsibility and obligation to manage these outside of right-of-way hazardous trees. This is no different than protecting the public from hazardous trees in camp grounds."

The legislation before us protects rate payers from such Federal schemes by allowing them to immediately prune a tree in imminent danger, or falling on a line, and by changing the liability standard that the Federal Government blocks them from pruning dangerous trees. This is a simple, straightforward bill aimed at improving the way the Federal Government operates. It is what everybody wants, but it changes the failed status quo by allowing utilities to do their jobs and make Federal neighbors and landlords more accountable.

It is good for human safety, for rate payers, for protecting forest and wildlife, and for protecting power lines that deliver renewable energy to the market. I commend the gentlemen from Montana and Oregon, and the witnesses who face this issue on the frontline every day for being there. I yield back the balance of my time.

[The prepared statement of Dr. Gosar follows:]

PREPARED STATEMENT OF THE HON. PAUL A. GOSAR, VICE-CHAIRMAN, WATER,  
POWER AND OCEANS SUBCOMMITTEE

Thank you, Mr. Chairman.

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The company's witness, Mr. Mike Neal, who manages forestry and special programs, had the unique opportunity to testify both during the second Bush administration and the current administration on the same topic with the same concerns. Little had changed in between his testimonies, prompting Mr. Neal to conclude that legislation was necessary to "ensure that electric utilities are able to manage power lines right-of-ways on Federal land efficiently and in a timely manner." I couldn't agree more.

This is common-sense legislation designed to bring consistency, accountability and fairness to a system that is none of the above. Last year's testimony and this hearing's witness examples are replete with examples that resemble something out of a Top 10 David Letterman list of government red-tape and endless delays and inconsistencies.

As opposed to being funny, though, this is a serious matter that is as real as it gets. On one hand, we have Federal reliability standards that can lead a utility to be fined up to \$1 million a day, but on the other hand, we have Federal land agencies that are circumventing utilities from meeting those standards. In the meantime, the risk of catastrophic fires increases from such government inaction. A witness from Wyoming said last year that it was simply luck that beetle-killed trees didn't fall on power lines during years of bureaucratic delay. As we have noticed in Arizona, the forests are not so lucky from catastrophic fires.

To make matters worse, the Federal land agencies are constantly putting ratepayers at risk by having them be liable for hazardous and dangerous trees outside of the right-of-way that threaten power lines and the forests around them. As APS's Mike Neal said, "In recent years, utilities have literally paid out millions of dollars to cover fire suppression and damage costs. The utilities believe that the Federal agencies, as the official land managers, have the responsibility and obligation to manage these outside the right-of-way hazard trees. This is no different than protecting the public from hazardous trees in a campground." The legislation before us protects ratepayers from such Federal schemes by allowing them to immediately prune a tree in imminent danger of falling on a line and by changing the liability standard if the Federal Government blocks them from pruning dangerous trees.

This is a simple, straightforward bill aimed at improving the way the Federal Government operates. It's not everything everyone wants, but it changes the failed status quo by allowing utilities to do their jobs and to make Federal neighbors and landlords more accountable. It's good for human safety, good for ratepayers, good for protecting forests and wildlife and good for protecting power lines that deliver renewable energy to the market.

I commend the gentlemen from Montana and Oregon and the witnesses who face this issue on the front-lines every day for being here today.

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Dr. FLEMING. The gentleman yields back.

Thank you for our opening statements. And now we will hear from our panel. Each witness' written testimony will appear in full in the hearing record, so I ask that witnesses keep their oral statements to 5 minutes as outlined in the invitation letter to you under Committee Rule 4(a). If for some reason you haven't gotten your full testimony out, we will accept it for the record. So there is no need to try to jam the rest of it in if you are not quite done with it.

I also want to explain how our timing lights work. Very simply, you are under a 5-minute light. It will be green for 4 minutes, then yellow for the final minute. If it turns red, then we want you, if you haven't already, to quickly conclude your remarks.

Before we begin the testimony, I want to ask for unanimous consent that Congressman Greg Walden's statement on this bill and his introduction of our first witness be entered into the record. Hearing no objection, so ordered.

Now, I recognize Mr. Dave Markham, President and CEO of the Central Electric Cooperative, Inc., in Redmond, Oregon to testify. Sir, you have 5 minutes.

**STATEMENT OF DAVE MARKHAM, PRESIDENT/CEO, CENTRAL ELECTRIC COOPERATIVE, REDMOND, OREGON**

Mr. MARKHAM. Good afternoon, Chairman Fleming and members of the subcommittee. As introduced, I am Dave Markham. I am the President and CEO of Central Electric Cooperative, and we are

headquartered in Redmond, Oregon. In Central Electric we are a distribution cooperative and we serve 32,500 meters, and that is over a 5,300-square mile service territory in central Oregon. And I also serve as the President of the Oregon Rural Electric Cooperative Association.

I appreciate the opportunity to testify today in support of the Electricity Reliability and Forest Protection Act and I commend Congressman Zinke and one of my state's Congressmen, Kurt Schrader, for their leadership with introducing this bill.

It was just 1 year ago when I was here and testified before the full House Committee on Natural Resources. At that time when I testified, I went into the problems that our electric cooperatives are encountering when working with the BLM and the Forest Service when it comes to things such as doing routine maintenance of our facilities, upgrading, or replacing our aging infrastructure that crosses federally managed lands.

And I shared several stories about the frustrating delays that we experienced, the lack of consistency, and also the lack of customer service I think that we experience when dealing with BLM and the Forest Service. I sit here today wishing that I could report to you that there has been significant improvement over the past year, but unfortunately that is not going to be the case.

It is with a lot of reluctance that I say that as far as the BLM and the Forest Service are concerned, we continue to see significant falling short of what I believe are acceptable cooperatives to ensure safe, reliable, and affordable electricity to our members. And I want to explain why this legislation is so important to fulfilling our mission of providing safe, reliable, and affordable electricity to rural Oregonians.

The first reason is consistency. We have experienced differing interpretations and applications of standards, and this isn't just between the Forest Service and the BLM. This is within the same districts, the same land agencies, and also even from ranger to ranger we experience it. This legislation is going to provide that much needed uniformity and standards. I believe it will improve consistency and give us some efficiency.

The second reason is accountability. This one is important to me. I will tell you, we could stay here all day and I could tell you stories about the lengthy delays that we experienced with the Forest Service and the BLM. But I am just going to give you one story because I am limited to 5 minutes.

Now my co-op, we have been waiting for nearly 2 years now to replace a short 1.2 mile section of underground cable that has been in place for 45 years. It is in deteriorating condition. Now, waiting 2 years on top of that, we have also been experiencing additional delays because we were recently informed that we would have to have an archeological study done on this and that could end up costing our co-op an extra \$87,000. If you take a look at it comparatively, our utility, we can construct a similar-type project on non-federally managed lands, we can do that within a month.

So I truly believe that this kind of service is unacceptable, and I believe that our government can and must do better.

The third reason that I believe the legislation is so important is the need for sound forest management. Now, I want to acknowl-



edge the provisions in this legislation regarding the removal of danger trees that are within or near the right-of-ways. And years ago, our neighboring utility to the south, Midstate Electric Cooperative headquartered in La Pine, Oregon, they requested approval from the Forest Service to remove some danger trees near a right-of-way and that request was denied.

I can probably let you finish the story right here and you will probably guess what happened, right; and, predictably what happened was, the tree came down, it took down a line and it started a major wildfire. And because the co-op was held liable, they ended up having to reimburse firefighting costs that were in the hundreds of thousands of dollars. In this legislation, the provision that shifts the liability away from the utility if the Federal land agencies deny permission to manage the vegetation, this provision is needed and is long overdue.

The safety, reliability, and affordability—you have heard me say it three times now in less than 5 minutes. It is a pretty important topic and I have been back here in Washington, DC enough to hear how important that is when you are talking about the electric grid. While I would love to see this legislation go much further than the language in this bill, I understand how the system works and I understand it takes time. H.R. 2358 is significant progress in the right direction. I am excited about what we could have here and I really urge the subcommittee to support this. I want to thank you for the opportunity to testify today and I would be pleased to answer any questions.

[The prepared statement of Mr. Markham follows:]

PREPARED STATEMENT OF DAVE MARKHAM, PRESIDENT/CEO OF CENTRAL ELECTRIC COOPERATIVE, INC. AND PRESIDENT OF OREGON RURAL ELECTRIC COOPERATIVE ASSOCIATION

Good afternoon Chairman Fleming and members of the subcommittee. I am Dave Markham, President and CEO of Central Electric Cooperative, headquartered in Redmond, Oregon. Central Electric is a distribution cooperative serving more than 32,500 meters across a 5,300 square mile service territory in central Oregon. I also serve as the President of the Oregon Rural Electric Cooperative Association, the organization that represents Oregon's 18 member-owned not-for-profit electric cooperatives.

I appreciate the opportunity to testify in support of the Electricity Reliability and Forest Protection Act (H.R. 2358). I commend Congressman Zinke and one of my state's Congressmen, Kurt Schrader, for their leadership introducing this bill. One year ago, I testified before the full House Committee on Natural Resources on the issues Oregon electric cooperatives have experienced when attempting to secure approval for routine maintenance, upgrades or replacement of our power lines with the United States Forest Service (USFS) and the Bureau of Land Management (BLM). I outlined several stories about frustrating delays, wildly varying standards and a lack of a customer service ethic among our Federal land management agencies. I am here again today to report while incremental progress has been made, it continues to fall significantly short of what I believe is acceptable to ensure the safety, reliability and affordability of electricity we provide to our members.

With 56 percent of the land in Central Electric's service territory federally managed, it is vitally important the USFS and BLM work cooperatively with us as we fulfill our mission providing safe, reliable and affordable electricity to rural Oregonians. Oftentimes, we believe this mission is threatened due to the actions of these agencies. We have found huge variations and approaches not only between the USFS and the BLM, but within the land management agency districts, and even ranger to ranger. We continue to experience a complete lack of uniform standards. This legislation will bring much needed consistency and accountability.

I want to provide a few examples of the issues we face when working with the USFS and BLM. More than 38 percent of Central Electric's distribution lines are

underground. Some of these underground lines are reaching the end of their life expectancy and are in the process of being replaced. We have been waiting for nearly 2 years to receive USFS approval to replace a short 1.3 mile section of deteriorating underground line that has been in place for more than 45 years. Adding to this lengthy delay, we were recently informed this approval process will now require an archeological study which could cost the cooperative an additional \$87,000—not an insignificant amount of money for our member-owners. If these delays continue, our construction opportunity will again be missed due to weather conditions that prevent accessibility in this location of our service territory. Comparatively, our utility can construct a similar project on non-federally managed land within 1 month. The protracted length of time it requires to receive approval to complete routine maintenance, upgrades or replacement of our power lines on federally managed lands is having an impact on the safety and reliability of the electricity we provide to our members.

As I noted last year, Central Electric's experience with our land management agencies is not an isolated incident. Another Oregon electric cooperative is in a 2-year holding pattern over needed upgrades to transmission lines that will ensure reliability for 15,000 members. As one electric co-op manager told me, "there are so many studies, so many processes, and so many hoops to jump through" the agencies seem paralyzed to act.

Nor is this experience isolated only to electric service. Many electric co-ops are involved in the deployment of broadband to rural areas. Douglas Electric Cooperative in Roseburg, Oregon, informed me they were forced to wait 18 months to attach fiber optic cable to six existing power poles, depriving their members of broadband services. I believe the provisions in the legislation calling for the establishment of timelines and benchmarks will go a long way toward expediting these important projects.

I also want to applaud the provisions in this legislation regarding the removal of "danger trees" within rights-of-way. In central Oregon, forest fires are a common occurrence due to lightning strikes and we are often at the mercy of Mother Nature. However, Mother Nature is not always to blame. Oregon electric co-ops have seen the impact when we are not allowed to properly maintain the rights-of-way.

Years ago, Midstate Electric Cooperative in La Pine, Oregon, requested the trimming of selective trees along the rights-of-way on USFS land for fear the trees were a hazard. This request was denied. Predictably, a tree fell into a power line, sparking a wildfire. Because the electric cooperative was held strictly liable, they had to pay firefighting costs of \$326,850. This legislation's provision shifting the liability away from the utility if the agency denies permission to manage the vegetation is needed and long overdue.

I am not here to denigrate the land management professionals at the USFS and the BLM although I am aware in certain instances, there has been a lack of customer service ethic by the agencies as well as excessive employee turnover that results in inconsistencies and the lack of accountability. Not all of this can be legislated, but I am hopeful the training and guidance language in the bill will help alleviate some of these issues and ensure agency personnel understand our priority of safety requirements and electrical system reliability.

I will reiterate my comments from last year's testimony. It is beyond time our Federal land managers work collaboratively with electric co-ops to develop common-sense reforms of their current practices. These operational and cultural problems will not be resolved overnight and must involve long-term solutions, such as this legislation. We need a streamlined process that will provide some consistency and accountability. H.R. 2358 is significant progress in the right direction and I urge the subcommittee to support it.

Thank you for the opportunity to testify. I would be pleased to answer any questions.

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Dr. FLEMING. Thank you, Mr. Markham.

I now recognize Mr. Doug Benevento, Director of Public Policy Development for Xcel Energy in Denver, Colorado.

**STATEMENT OF DOUG BENEVENTO, DIRECTOR OF PUBLIC POLICY DEVELOPMENT, XCEL ENERGY, DENVER COLORADO**

Mr. BENEVENTO. Thank you for holding this hearing, Mr. Chairman, Mr. Ranking Member and providing an opportunity to

comment on the Electrical Liability and Forest Protection Act. Xcel Energy is a Midwest and Western electric and gas utility with operations in Minnesota, Colorado, Texas, New Mexico, Wisconsin, North Dakota, South Dakota, and Michigan. Our combined operations have just over 3 million customers on the electric side, and just fewer than 2 million gas customers. We are also the largest wind provider in the United States and the 10th largest solar provider in the United States.

We have 19,000 miles of transmission, including several hundred miles of hi-voltage transmission, as well as distribution on land managed by the Federal Government. And while Colorado has had multiple fires in recent years, we have been fortunate in that damage to our infrastructure has been minimal. However, we believe in being proactive with respect to protecting our customer's reliability.

That is why we have not only spent millions of dollars to protect our infrastructure on public lands, but we have also invested in sophisticated mapping systems that allow us to specifically identify trees which pose a risk to our transmission, or buildup of vegetation that could increase the intensity of a fire.

We believe the principles outlined in the Electricity Reliability and Forest Protection Act would provide additional, useful tools, some here today, to support this legislation. While we understand that this legislation has miles to go before its ultimate approval, we believe that the principles outlined in the proposal strike a balance between protecting our public lands and our need to protect our transmission that rests upon it. We think this legislation captures appropriately an approach that is productive. It establishes uniform procedures and practices for management, but does not micromanage the Agency.

The legislation does, however, establish standards for when a utility can act that are appropriate. We support the language in the legislation which allows for the immediate removal of vegetation that would pose an imminent threat to transmission. We also believe the use of integrated vegetation management for planning is appropriate from both a forest health and utility infrastructure perspective.

While this legislation addresses management on the right-of-way and the management adjacent to the right-of-way, we have also been concerned about management issues off of the right-of-way. Management of vegetation off of our right-of-way, particularly in remote areas where our transmission lines are located, is the responsibility of the Federal Government, but it is often not being done because of constrained budgets and the fact that this work is done in remote areas which are not priority areas for the Forest Service. Because we don't have responsibilities for these areas, we have not dealt with vegetation management in off right-of-way areas.

But we are concerned about fuel buildup in these areas resulting in a risk to our infrastructure in the event of a fire. Targeted and discrete treatment of these areas near our infrastructure would significantly reduce the risk to our facilities. The work that needs to be performed is limited, often less than a quarter of an acre, and is essentially clearing out fuel on the ground, or thinning trees to

reduce crowding. It should be the exact work that the Federal land management agencies would do absent other priorities.

We are willing to help treat these very limited areas to reduce the fire threat and are willing to do so at our cost and at the direction of the Forest Service. The issue is that if we were to perform such voluntary work, we would need greater clarification as to what standard of liability would apply to us. Because this is voluntary work, work for which we otherwise are not responsible, we would need assurance that we would be held at most to a gross negligence standard in the unlikely event that a fire broke out during off-right-of-way restoration work.

In contrast to on-right-of-way work where a strict liability standard is in place, at least for the first \$1 million worth of damages regarding the transmission corridor, we cannot undertake similar liability responsibilities off the right-of-ways. We believe this helpful clarification will encourage utilities to partner with the agencies in both dollars and workforce to address such off-right-of-way fire concerns.

While we certainly don't anticipate any problems and haven't had any in recent memory, we believe that changing the level of liability appropriately reflects the voluntary nature of this activity. I am going to be clear. This off-right-of-way work would be absolutely no commercial value to us. And we are adamant that any work would have to be discussed, reviewed, and ultimately approved by the Federal Land Management Agency. Thank you for your time and I am happy to take any questions.

[The prepared statement of Mr. Benevento follows:]

PREPARED STATEMENT OF DOUG BENEVENTO, ON BEHALF OF XCEL ENERGY

SUMMARY OF TESTIMONY

Xcel Energy is testifying in support of the principles outlined in the Electric Reliability and Forest Protection Act and to recommend to the subcommittee an additional approach that will help to protect our public lands and utility infrastructure.

Xcel Energy has electric and gas infrastructure in remote areas of public lands throughout our service territory in Colorado. In a time of constrained budgets and a focus on the wildland urban interface ("WUI") Federal land managers have not been able to fully prioritize management off the right-of-way ("ROW") in these more remote areas. While we understand the focus on the WUI we are concerned that a fire in a more remote area could result in damage to our infrastructure.

In Colorado there are areas off our ROW and adjacent to electric transmission structures where we and the Forest Service believe selective clearing would reduce the risk to our infrastructure in the event of a passing wildfire.

We have proposed to our Federal partners that we would be willing to perform off ROW work either on a cost-share basis, or at our own expense. Performing the work with existing contracted resources would require an additional Special Use Permit ("SUP"), which would include unacceptable liability provisions.

The existing liability standard for work on our ROW is strict liability up to \$1 million in damages. After that first \$1 million is reached there is a new standard for any additional damages.

Because this off ROW work is proactive, voluntary and would assist in the management of public lands, we believe that there should be a different liability standard for work performed off the ROW if that work is done at the direction and with the approval of the relevant Federal land manager.

We respectfully suggest that the subcommittee examine whether a public-private partnership could be incentivized if the standard of liability for a private entity performing work off its ROW were gross negligence instead of strict liability or comparative liability.

## INTRODUCTION

Chairman Fleming, Ranking Member Huffman, members of the subcommittee, thank you for holding this hearing and providing the opportunity to comment on the draft legislation.

My name is Doug Benevento and I'm here representing Xcel Energy, a vertically integrated investor-owned gas and electric utility that provides service to just under 3½ million electric customers and just under 2 million gas customers in eight states: Minnesota, Colorado, Texas, New Mexico, Wisconsin, North Dakota, South Dakota, and Wisconsin.

Throughout its service territory, Xcel Energy has nearly 19,000 miles of transmission lines. Included in that number are several hundred miles of high voltage transmission facilities in Colorado on land managed by the Federal Government.

In order to ensure reliability for our customers, we are committed to using the most progressive technology available to reduce the risk of damage or destruction to our infrastructure from wildfire.

Along with spending millions of dollars to reduce wildfire risk on public lands in Colorado we have also:

- Deployed remote sensing technology including Light Detection and Ranging (LiDAR) and high resolution imagery from a helicopter which enables Xcel Energy to surgically identify hazard trees and areas around transmission structures that are high risk for wildfire damage due to fuel load on the ground and forest densities off the ROW that need to be thinned.
- Leveraged the output from remote sensing combined with geospatial risk analysis which has identified approximately 1,600 transmission structures that we've identified as "high risk" for damage should a wildfire pass through these structure sites. Approximately 450 of these high risk structures are located on Federal lands. At this time, there is no plan from the U.S. Forest Service to address over 100 of these high risk structures.

Xcel Energy is also committed to ensuring electric service reliability for its customers by working with our Federal partners to reduce the risk from fires to our infrastructure on public land. To this end, Xcel Energy and the U.S. Forest Service entered into a memorandum of understanding, allowing us to pay the USFS to perform necessary off ROW wildfire protection work adjacent to high and medium risk transmission structures.

## ELECTRIC RELIABILITY AND FOREST PROTECTION ACT

We believe that passage of legislation like the Electric Reliability and Forest Protection Act could help both us and Federal land managers ("FLM") protect utility infrastructure.

In particular, we believe that the legislation appropriately gives discretion to utilities to respond to emergency conditions. We also believe that the unified vegetation management plan, facility inspection plan, and operation and maintenance plan will be useful planning documents for both utilities and Federal land managers.

If the unified management plan is designed properly, approved in a timely manner and implemented correctly it would provide guidance to utilities on how to proceed with work on or adjacent to existing ROW. Additionally it will provide certainty to the utilities and a useful management tool for the FLM.

We understand that this legislation is just beginning its journey through the legislative process. However, as it progresses we hope that this subcommittee and your colleagues on both sides of Capitol Hill continue to focus on the issue of balancing the important oversight role played by the Federal land managers with our equally important job of ensuring reliability for our customers.

## LIABILITY FOR OFF-ROW WORK

Today I want to raise an additional issue not addressed in the bill that we hope the committee will consider. While this is an important issue for Xcel Energy, we think it is applicable to other utilities as they consider the need to perform work off existing ROW.

Our concern pertains to off-ROW vegetation management that is occasionally necessary to protect transmission lines from wildfire threats originating outside of the ROW.

Our concern focuses on dense forests adjacent to our transmission structures that can pose an enormous threat to our facilities survivability from a passing wildfire.

We are under no obligation to manage vegetation off of our ROW. It is the responsibility of the Federal land management agency to manage it to protect our

facilities. However, lack of resources and a focus on the WUI areas by Federal land managers has led to a decline in management in more remote areas where we have important infrastructure.

We routinely manage our ROW and could easily turn our attention to these small (~¼ acre per structure), but highly critical off-ROW work areas.

There is no debate on whether this work should and can be done in a fashion that minimizes impacts to the surrounding environment, wildlife and the surrounding ecosystem. In fact, it can also help develop pollinator habitat.

While, Xcel Energy is willing to contribute field crew and financial resources to these off-ROW management efforts, we are concerned that if we do so we take on unrestricted liability.

That is a standard we are not willing to expose our company and ratepayers to in order to perform work that is not our responsibility. Xcel Energy is hopeful Congress will consider legislation clarifying that a utility doing off-ROW vegetation management work pursuant to an agency-approved vegetation plan may do so without the fear of a taking on strict or comparative liability. In these cases we believe a gross negligence standard with a potential cap on our overall liability is an appropriate approach for our voluntary efforts to solve these wildfire threats. In addition to or as an alternative we believe a cap on liability could also address our concerns.

We believe what we're proposing can be successful at both improving the health of public lands and protecting our infrastructure if we can agree on the following principles:

- All work must be timely reviewed and approved by the relevant FLM before it is undertaken;
- There can be no commercial value from the management activity to the utility; and
- The liability standard for performing such work should be gross negligence and/or capped at a set amount.

We are open to discussing other principles and would certainly welcome the input of the Departments of Agriculture and Interior on such a proposal. We want to be clear about our goal, improving the ability of our infrastructure to survive a wildfire in the remote areas where it is located. We are not seeking a larger opening in the management of public land that could lead to larger applications of this language.

What we are suggesting is not unique. In many parts of the country under state law, private landowners are encouraged to engage in prescribed fire activity to reduce hazardous fuel conditions. When performing this work, if the fire were to spread, actions would be measured by a gross negligence standard.

In other situations, fire fighters from adjacent districts are urged to be good neighbors and help suppress fires with the assurance that they will be held harmless.

Similarly here, utilities cannot risk partnering with the Forest Service on off-ROW fuel reduction activities without accompanying protections. We are not asking for a complete waiver of liability but the standard should be one of gross negligence.

Xcel Energy would welcome a dialog with Committee staff and the agencies in the coming weeks to see how best this partnership could be expanded and the necessary protections could be incorporated.

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Dr. FLEMING. Thank you, Mr. Benevento.

The Chair now recognizes Mr. Gregory Smith, Director of Lands at the U.S. Forest Service in Washington, DC.

**STATEMENT OF GREGORY SMITH, DIRECTOR, LANDS AND REALTY MANAGEMENT, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC**

Mr. SMITH. Thank you, Mr. Chairman, and thank you for giving us the opportunity to present the Department of Agriculture's views on the discussion draft to enhance electric reliability by facilitating vegetation among the Federal land managers.

The Department recognizes the reliability of delivery of electricity is essential to the Nation's welfare and economy and that fire service disruptions that result from contact between vegetation

and power lines threaten safety, resources, and places a burden on rate payers. The Forest Service works collaboratively with holders of electric transmission and distribution line authorizations to develop appropriate vegetation management plans that increase reliability, minimize the risk of forest fires, and directs compliance with the applicable forest, Federal, state, and local requirements. These plans should include procedures that allow for routine emergency removal of vegetation.

The Agency's 2013 vegetation management guide specifies for field staff the procedures and practices that should be included in operation and maintenance for power lines. This plan states that where vegetation conditions inside or outside the authorized right-of-way pose an imminent threat to the power line facilities, utility companies may remove those threats immediately without prior approval from the Forest Service.

This guide provides for all other vegetation management activities to be planned and coordinated with the Agency to ensure utilities and their contractors are aware of any existing conditions that could present a threat to them or the public and to ensure that requisite environmental review, if there is any, is conducted.

Members of my staff communicate regularly with utilities to address specific issues and to discuss programmatic effects to improve Agency responsiveness. At many locations, utility managers and Forest Service field personnel are successful in timely management of vegetation in corridors. In other places, we have had some problems. Response times can take longer than we would like as program staff managers have approximately 70,000 special use permits and 6,000 new special use permits each year.

Regarding the discussion draft, the Forest Service is eager to work with the subcommittee on this legislation. However, some of the draft provisions we think are unnecessary and are duplicative of existing law and regulation in the Forest Service's policy.

In addition, the Agency cannot support some provisions as currently written.

Number one, unduly restrictive requirements that restrict the Secretary of Agriculture from enforcing National Forest System regulations.

Two, impose regulations and reviews that approve deadlines which would be unreasonable for many staffs to meet under the current resource constraints and would impose a liability if these conditions are not met.

Three, eliminate the FLPMA strict liability for electric transmission and distribution facilities which are a high-risk use and occupancy of Federal land.

And four, allow utilities without involvement of the Agency to cut trees on National Forest System lands that do not pose an imminent threat to the electric transmission or distribution facilities.

To enhance cooperation and efficiency in maintenance of electric transmission and distribution line right-of-ways, the Agency encourages utilities to meet with field personnel, explain the required actions, and work collaboratively with others to develop plans for getting the work done. We look forward to assisting the subcommittee with the legislation and future discussions on the Agency efforts to improve reliability.

Mr. Chairman and members of the subcommittee, this concludes my statement and I would be happy to answer any questions.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF GREGORY SMITH, DIRECTOR, LANDS AND REALTY  
MANAGEMENT, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Chairman and members of the subcommittee, thank you for the opportunity to present the U.S. Department of Agriculture's views regarding the discussion draft to enhance the reliability of the Nation's electricity grid by facilitating vegetation management on Federal lands.

THE DISCUSSION DRAFT

The discussion draft would add a new section 512 to the Federal Land Policy and Management Act of 1976. Section 512(a) would require Federal land managers to provide direction to ensure that all existing and future rights-of-way for electric transmission and distribution facilities on Federal lands include provisions for utility vegetation management, facility inspection, and operation and maintenance activities that:

- Are developed in consultation with the holders of the right-of-way;
- Enable the holder to operate and maintain these facilities in good working order and comply with Federal, state and local electric system reliability and fire safety requirements;
- Minimize the need for case-by-case or annual approvals for routine and emergency vegetation management activities; and
- When review is required, provide for expedited review and approval.

Section 512(b)(2)(A)(i) and 512(b)(4) would require Federal land managers to review and approve vegetation management, facility inspection, and operation and maintenance plans within 30 days, and would require that the Secretary use the agency's categorical exclusion process under National Environmental Policy Act of 1969 to exclude from documentation in an environmental assessment or environmental impact statement any vegetation management plans developed for existing rights-of-way. Under Section 512(b)(1), plans would not have to cover the entire right-of-way.

Section 512(b)(5) would provide that once the vegetation management plan is approved, the holders of the right-of-way would have to provide the Federal land manager with only notification of anticipated activities in the coming year, a description of those activities, and certification that the activities are in accordance with the plan. If vegetation on or adjacent to a right-of-way does not meet clearance requirements under Federal, state, or local standards, the affected Federal land manager would have only 3 business days, even in non-emergency situations, to approve the holder's request to conduct vegetation management activities to meet those requirements. If approval is not given within that time frame, the holder may take action after providing notice to the Federal land manager.

Under section 512(f) holders of a right-of-way would be shielded from liability if the affected Federal land manager failed to authorize vegetation management activities that are required to comply with Federal, state, or local system reliability and fire safety requirements. Section 512(g) would encourage development of training for employees and section 512(h) would mandate implementing regulations.

The Department recognizes that reliable delivery of electricity is essential to the America's welfare and economy, and that fire and service disruptions that result from contact between vegetation and power lines threaten public safety and resources and place a potential burden on rate payers. The Forest Service is eager to work with the subcommittee on this legislation. However, some of the discussion draft's provisions are unnecessary to the extent they duplicate existing requirements in Forest Service policies and special use authorizations. In addition, the Agency cannot support provisions that, as currently written, would:

- Unduly restrict the Secretary's ability to exercise appropriate management authority over the National Forest System;



- Impose review and approval deadlines, which would be unreasonable for many field staffs to meet under current resource constraints, and which would expose the Agency to liability if unmet; and
- Eliminates strict liability for electric transmission and distribution facilities, which are a high-risk use and occupancy of Federal land, and eliminates liability for negligence.

The Forest Service also cannot support provisions that would allow utilities without Agency involvement to cut trees on National Forest System lands that do not pose an imminent threat to electric transmission and distribution facilities, particularly when those trees are outside of authorized rights-of-way.

#### THE CURRENT PROGRAM

The Forest Service administers approximately 70,000 special use authorizations, including 2,700 authorizations for power lines, covering about 18,000 linear miles. Those facilities serve as critical links in the national electricity grid. Helping to ensure structures and adjacent natural resources are maintained in a way that protects them from damage or destruction is an important and challenging part of Agency operations. Program staff manages approximately 70,000 special use authorizations and processes nearly 6,000 proposals for new uses annually. This makes it imperative for utilities planning maintenance work to contact the responsible field office as far in advance as possible. The Agency's response time varies depending on the capabilities of each field office, the level of work planned, and conditions in the planned area.

The Forest Service works collaboratively with holders of electric transmission and distribution line rights-of-way to develop appropriate vegetation management plans that allow holders to provide for reliability, minimize the risk of forest fires, and comply with applicable Federal, state, and local requirements. These plans should include procedures that allow for emergency removal of trees that pose an imminent threat without prior approval from the Forest Service. The Agency's 2013 vegetation management guide specifies for field staffs the procedures and practices that should be included in operation and maintenance plans for power lines. This guide states that where vegetation conditions inside or outside the authorized right-of-way pose an imminent threat to power line facilities, utility companies may remove those threats immediately without prior approval from the Forest Service. The guide provides for all other vegetation management activities to be planned and coordinated with the Agency to ensure utilities and their contractors are aware of any existing conditions that could present a threat to them or to the public and to ensure that the requisite environmental review, if any is conducted.

The Agency is well aware of the frustrations experienced by some utilities due to delayed responses for maintenance approvals and inconsistency across field offices, and is taking steps to address these concerns. Members of my staff communicate regularly with utilities to address specific issues and to discuss programmatic efforts to improve agency responsiveness. Staff members attended the Western Utilities Group meeting this month in Washington, DC and discussed the Agency's efforts to improve procedures for transmission line maintenance, including enhancing vegetation management directives and permit clauses, completing review of the Federal vegetation management MOU with the Edison Electric Institute (EEI), developing web-based special uses training, conducting reviews of special uses business practices, and holding an Agency executive energy forum, scheduled for June of this year.

To enhance cooperation and efficiency in maintenance of electric transmission and distribution line rights-of-way, the Agency encourages utilities to meet with field personnel, explain required actions, and work collaboratively to develop plans for getting work done. The Department recently embarked on an initiative to look at reducing fire risk beyond the right-of-way limits. The Secretary of Agriculture convened the Western Utilities Summit in 2013 with power company executives to explore partnership opportunities for increasing the pace and scale of forest restoration and fire mitigation work. Pilot projects where utilities are contributing to reducing their risk and the fire risk within fire-derived ecosystems have begun. As an example, Xcel Energy, in partnership with national forests of the Colorado Front Range, has provided funding for treating the live and dead fuel component of stands outside of the corridor. A 5-year operating plan was completed and signed in June 2014 for a 5-year investment of \$1.2 million. The 5-year plan outlines reducing hazardous fuels on 3,350 acres and addresses 326 of 400 high priority structures across three national forests. In addition, a fire science analysis by USFS and Xcel

scientists has been published. The document discusses the joint science to guide vegetation clearance standards and vegetation treatments for prevention of damage to lines and other infrastructure.

We look forward to assisting the subcommittee with the legislation and future discussions on Agency efforts to improve reliability. Chairman and members of the subcommittee, this concludes my statement and I would be happy to answer any questions you may have.

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Dr. FLEMING. Thank you, Mr. Smith.

The Chair now recognizes Mrs. Karen Mouritsen, Deputy Assistant Director for Energy, Minerals, and Realty Management at the Bureau of Land Management in Washington, DC.

**STATEMENT OF KAREN E. MOURITSEN, DEPUTY ASSISTANT DIRECTOR, ENERGY, MINERALS AND REALTY MANAGEMENT, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Ms. MOURITSEN. Thank you, Chairman Fleming, Ranking Member Huffman, and members of the subcommittee. Thank you for the opportunity to provide the Department of the Interior's views on H.R. 2358, the Electricity Reliability and Forest Protection Act. This bill amends the Federal Land Policy and Management Act, or FLPMA, by adding new provisions regarding vegetation management and electric transmission rights-of-way.

The Department supports the bill's vision of early and frequent communication with the holders of these rights-of-way to plan for and address their needs, including the development of plans for management of vegetation. The Department opposes, however, the bill's automatic authorizations and extremely constrained review time frames for these plans.

The BLM works closely with thousands of utility organizations to manage rights-of-way for the transmission and distribution of electrical power. We always appreciate the opportunity to work collaboratively with our stakeholders and partners and in managing rights-of-way, we believe that advanced planning is critical to ensuring that both the BLM and the utilities can respond to vegetation management requirements in a timely and effective manner.

The BLM also recognizes that the approval of thoughtfully cited rights-of-way is crucial to the economic vitality of our Nation. Currently, the BLM administers over 15,000 authorizations for electric transmission and distribution facilities.

To support the efforts needed to improve transmission reliability and increase capacity in this country, the President's Fiscal Year 2016 budget for the BLM includes a \$5 million increase to allow the BLM to continue to work to identify and designate energy corridors in the areas of low conflict which should expedite future permitting processes for new lines.

As currently written, the bill would apply to thousands of existing rights-of-way, some of which were approved decades ago and will soon expire. Before the enactment of FLPMA in 1976, the BLM issued a significant number of rights-of-way under various authorities, often for terms of 40 to 50 years, and these rights-of-way typically do not contain vegetation management or reliability

standards which are standard provisions of the post-FLPMA rights-of-way.

In addition, the BLM is aware that the Federal Energy Regulatory Commission recently issued an order designed to improve the reliability of electric transmission systems by preventing or minimizing outages from vegetation located on or near the transmission rights-of-way.

BLM supports these standards and appreciates and supports the work of the utility companies to comply with these standards. BLM currently provides opportunities for right-of-way grant holders to establish plans of operation that address vegetation management and other operating procedures. Routine vegetation management activities generally do not require separate BLM approvals, nor do true emergency actions. Most of the right-of-way grants issued in the past 20 years include such plans of operations.

The Department believes that the bill's mandatory approval time frame of 30 days for new vegetation management plans is not realistic given the potential scope of such plans and the number of rights-of-way they could cover. Additionally, the bill does not provide any flexibility for the BLM to work with the utility to address inadequate or incomplete plans, nor would it allow time for the BLM and the utility to coordinate with local communities.

Likewise, the Department believes that the time frame of 3 business days to respond to requests for treatments is problematic as it would preclude the BLM's ability to work with utility companies to modify requests when and where appropriate, to ensure treatments satisfy the BLM resource management responsibilities, and also address utility needs in a manner that is safe given current on-the-ground conditions.

The BLM values our partnerships with the holders of the electrical transmission and distribution rights-of-way, and we will continue to work toward further collaboration to meet our shared goals. We appreciate the subcommittee's attention to this issue, and thank you for the opportunity to be here.

[The prepared statement of Ms. Mouritsen follows:]

PREPARED STATEMENT OF KAREN E. MOURITSEN, DEPUTY ASSISTANT DIRECTOR,  
ENERGY, MINERALS, AND REALTY MANAGEMENT, BUREAU OF LAND MANAGEMENT,  
DEPARTMENT OF THE INTERIOR

#### INTRODUCTION

Thank you for the opportunity to provide the Department of the Interior's views on H.R. 2358, the Electricity Reliability and Forest Protection Act, which amends the Federal Land Policy and Management Act (FLPMA) by adding new provisions regarding vegetation management, facility inspection and operation, and maintenance of electric transmission and distribution facility rights-of-way (ROWs). The Bureau of Land Management (BLM) works closely with thousands of public, private, and cooperative utility organizations to manage ROWs for the transmission and distribution of electrical power. The Department values these partnerships and the vital services that electric utilities provide for local communities and the Nation. We also value our shared relationships and responsibilities with our Federal utility partners, the Federal Power Marketing Administrations.

The Department notes that the draft legislation was provided to us about 1 week before the hearing date and the bill was introduced late last week, less than a week prior to the hearing, leaving little time for analysis of the introduced bill's provisions. We will provide preliminary views on the bill in this statement, but the Department reserves the right to submit additional comments about the introduced bill to assist in developing the Administration's position if necessary. We also would be glad to engage in further discussion with the sponsor and the subcommittee on

the bill. As it is currently written, however, the Department opposes the bill's automatic authorizations and extremely constrained review time frames.

The BLM manages roughly 245 million acres of Federal land consistent with its mission to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. As part of that mission, the BLM has issued thousands of miles of ROWs for electricity transmission and distribution under FLPMA and other applicable authorities. The BLM recognizes that the approval of ROWs that are thoughtfully sited are crucial to the economic vitality of our Nation. Congress reinforced this in Section 103 of FLPMA which defines ROWs as one of the principal or major uses of the public lands. Currently, the BLM administers over 15,000 authorizations for electric transmission and distribution facilities, ranging from low-voltage 12 kilovolt (kV) lines to high-voltage 500 kV lines and related infrastructure.

The BLM is committed to ensuring public safety and reliability with respect to the electricity transmission ROWs it administers. The BLM takes its responsibility for the administration of these ROWs seriously, values the opportunity to work with utility companies to serve our communities, and works simultaneously to meet its obligations for the management and protection of natural and cultural resources on the public lands as well as protection of public health and safety. To support the necessary upgrades needed to improve reliability and increase capacity, the President's Fiscal Year 2016 budget includes a program increase of \$5.0 million in the Cadastral, Lands and Realty Management program to enhance the BLM's ability to identify and designate energy corridors in low conflict areas and to site high-voltage transmission lines, substations, and related infrastructure in an environmentally sensitive manner.

Before the enactment of FLPMA in 1976, the BLM issued a significant number of ROWs under various authorities. These earlier ROWs were often issued for terms of 40 to 50 years and typically do not contain vegetation management and reliability standards. Because FLPMA repealed the prior authorities, the BLM can only address reauthorization under Title V of FLPMA. Reauthorization generally requires analysis under the National Environmental Policy Act (NEPA) and other laws that were not in existence when the original authorizations were granted. This process represents a substantial workload for the BLM, but ultimately leads to the issuance of ROWs with clear and consistent terms and conditions that address, among other topics, maintenance issues such as vegetation management.

In addition, the BLM is aware that the Federal Energy Regulatory Commission (FERC) issued an order in September 2013 approving updated transmission vegetation management standards. Those standards, which became enforceable for transmission owners in July 2014, were implemented to improve the reliability of electric transmission systems by preventing outages from vegetation located on transmission ROWs and minimizing outages from vegetation located adjacent to ROWs. The standards also address maintaining clearances between transmission lines and vegetation on and along transmission ROWs and reporting vegetation-related outages to the Regional Reliability Organizations (RRO) and the North American Electric Reliability Council (NERC). The BLM appreciates FERC's issuance of these standards and their emphasis on improving transmission safety and reliability. The BLM also appreciates the work of utilities which have increasingly sought to conduct vegetation management treatments within and adjacent to ROWs on BLM-administered public lands to comply with these new standards. In some situations, the current ROW authorizations may not be consistent with the updated NERC standards; in those situations the BLM works with the individual ROW holders to address their concerns.

#### COOPERATIVE APPROACH

Under the Energy Policy Act of 2005, which directed Federal land managing agencies to expedite approvals necessary to allow the owners or operators of electric transmission or distribution facilities to comply with standards for vegetation management that imminently endanger the reliability or safety of the facilities, the BLM and other Federal agencies work to increase their collaboration with utilities. The BLM is a party, along with other Departmental agencies, the Environmental Protection Agency, the Forest Service, and the Edison Electric Institute (an association of shareholder-owned electric companies), to an interagency Memorandum of Understanding (MOU) that formalizes a cooperative approach to streamline the management of vegetation near utility facilities. The MOU facilitates a variety of mutually accepted goals, including maintaining reliable electric service, improving safety, reducing the likelihood of wildfires, reducing soil erosion, reducing environmental risk, streamlining administrative processes, and incorporating integrated

vegetation management (IVM) where appropriate. Under the MOU, the parties agreed to a set of IVM practices intended to protect human health and the environment and also agreed to the principles of cooperation, timely communication, and consistent management. The current MOU has expired, but its operational principles are still in use and the parties are currently working toward approving a new MOU.

The BLM works closely with utilities that hold many BLM ROWs, such as Arizona Public Service, NV Energy, and Idaho Power, to establish master agreements that provide standard terms and conditions that can be applied to multiple ROW grants. These agreements enhance consistency across BLM offices and create greater predictability and efficiency for the utility operators as they conduct business with the BLM. In Idaho, this cooperation has led to increased efficiency approving operations and maintenance proposals for transmission ROWs and associated infrastructure. Another way the BLM collaborates with utilities is through offering training to BLM employees with the assistance of industry experts.

The BLM appreciates any opportunity to work collaboratively with all our stakeholders and partners, including utility companies, and recognizes the value of advance planning for future maintenance needs when possible. Ongoing communication and coordination are also critical to ensuring that both the BLM and the utility can respond to vegetation management requirements in a timely manner.

#### VEGETATION MANAGEMENT IN RIGHTS-OF-WAY

The growth of vegetation within utility ROWs can, in some cases, pose risks to the infrastructure needed to provide a continuous supply of electrical power. Trees can fall or otherwise make contact with overhead power lines, resulting in power outages or fires, which pose threats to public safety, private property, and natural resources. Ground fires can create heat damage to facilities or burn wooden power poles. Thus, to provide a dependable supply of electricity, utilities must manage vegetation near their transmission and distribution lines to prevent blackouts and wildfires; a goal shared by the BLM. Plans of development incorporate various information elements, including health and safety standards and maintenance actions needed to ensure that the ROW grant holders and the BLM know what to expect when vegetation management is undertaken. Advance planning is critical for the BLM to expedite any approvals necessary to allow ROW grant holders to conduct vegetation management activities.

When issuing or renewing a ROW grant to a utility company, the BLM completes an analysis required by NEPA and other statutes, including consideration of activities necessary for the ongoing maintenance and operation of those lines. The analysis may also consider other resources or activities appropriate for the location or management needs of a particular ROW. The BLM includes standard terms and conditions for the management of vegetation, agreed upon by both the agency and the ROW grant holder, when issuing the ROW grant. Under the terms and conditions typically included in ROW grants, a utility company may conduct minor trimming, pruning, and weed management to maintain the ROW or facility after simply notifying the BLM. Further BLM authorization is typically not required.

In some cases, BLM approval is needed prior to ground disturbance and the cutting and removal of any timber or vegetative resources that have market value. The utility company can often obtain BLM approval for the removal of hazard trees through a streamlined process (e.g., utilizing categorical exclusions). For an emergency situation causing an imminent hazard, no BLM pre-approval would be necessary. For other actions within the ROW, but beyond its scope, BLM approval is needed. These actions may require additional environmental analysis. In general, the degree of analysis required for a specific vegetation removal action depends on the resources affected, the scope of the action to be taken, and the environmental analysis that had been previously completed. To facilitate efficiency, the BLM encourages early and ongoing communication with our utility partners regarding vegetation management needs and concerns.

#### HAZARDOUS FUELS MANAGEMENT

The National Cohesive Wildland Fire Management Strategy represents a collaborative approach to restoring and maintaining resilient landscapes, creating fire-adapted communities, and managing wildfire response in a complex environment. The BLM is committed to protecting people, property, and resources from wildland fire, and uses a proactive approach to treat hazardous fuels. The BLM regularly completes hazardous fuels reduction treatments, including thinning, salvage, and prescribed burns.

The BLM routinely works with partner organizations to engage in land and watershed restoration, community preparedness, and hazardous fuels reduction activities. Departmental agencies employ an integrated approach to wildland fire management, including the prioritization of hazardous fuels treatments to mitigate the potential risk of wildfires. Utilities that hold ROW grants are an important partner in this approach. Hazardous fuels reduction projects that protect vital infrastructure can also help the Department of the Interior to protect rural communities from wildland fire, and the presence of important infrastructure is one of the factors that the Department considers in prioritizing hazardous fuels projects.

Electrical transmission ROWs can often provide significant potential for the establishment of fuel breaks and for linking hazardous fuels reduction projects ultimately creating a stronger network of fuel breaks, which contributes to landscapes that are more resilient to fire. Such projects help the BLM to protect communities and natural resources from wildland fire, and the utilities to ensure protection of their electricity transmission and distribution infrastructure. The Cohesive Strategy highlights the importance of working with communities to identify community values and infrastructure, including electricity transmission facilities, to be prioritized for proactive mitigation of wildfire risk.

#### H.R. 2358, ELECTRICITY RELIABILITY AND FOREST PROTECTION ACT

H.R. 2358 amends FLPMA by adding new provisions regarding vegetation management, facility inspection and operation, and maintenance of electric transmission and distribution facility ROWs. Specifically, it requires the Secretary of the Interior and the Secretary of Agriculture to provide ROW grant holders the option of developing plans to conduct such activities to comply with applicable system reliability and fire safety requirements. The bill specifies that the Secretaries would not have the authority to modify the reliability and safety requirements, and that the Secretaries must jointly develop a process to review and approve within 30 days the vegetation management plans and any amendments to them. The review and approval process would have to include a way for the agencies to notify ROW grant holders of any changed conditions that warrant modifications to the plans, provide grant holders with the opportunity to submit proposed plan amendments to address the changed conditions, and allow the grant holders to continue implementing the portions of approved plans that do not adversely affect the conditions causing the need for modifications.

The bill mandates that the Secretaries apply the categorical exclusion process under NEPA to the vegetation management plans. The plans, which could cover one or more ROWs, would become part of the authorizations governing the covered ROWs and danger trees adjacent to the ROWs. Danger trees are defined as any trees inside the ROWs or trees outside the ROWs that would come within 10 feet of power lines or related structures if they fell. Once a plan is approved, the ROW grant holder would notify the granting agency of vegetation management activities it anticipates undertaking in the coming year, describe the activities, and certify that the activities conform to the plan.

In cases where vegetation within ROWs or danger trees adjacent to ROWs have contacted or are in imminent danger of contacting electric transmission lines, H.R. 2358 provides authority for grant holders to prune or remove the vegetation as long as they notify the appropriate agency within 24 hours afterwards. Similarly, in cases that are not deemed as hazardous but where vegetation within or adjacent to ROWs does not meet NERC, state, or local standards, grant holders may conduct vegetation management activities to meet those clearance requirements if the agency fails to allow such activities within 3 business days after receiving a request for authorization to undertake them. The bill requires the Secretaries to annually report on requests and actions under both of these situations. If either Secretary fails to allow ROW grant holders to conduct vegetation management in order to comply with Federal, state, or local reliability and fire safety requirements, the bill relieves the ROW grant holders of liability if the vegetation causes or contributes to wildfire damage, loss, or injury.

Finally, H.R. 2358 requires the Secretaries to take additional steps regarding implementation. The bill encourages both Secretaries to develop training programs for relevant employees regarding electric system reliability standards and fire safety requirements. It also directs the Secretaries to propose implementing regulations within 1 year of enactment and finalize them within 2 years.

#### ANALYSIS

As currently written, H.R. 2358 would apply to thousands of existing ROWs, some of which were approved decades ago and will soon expire. The Department

supports early and frequent communication with the holders of these ROWs to plan for and address their needs, including the incorporation of plans for maintenance and vegetation management. The Department opposes, however, the bill's automatic authorizations and extremely constrained review time frames. The BLM already provides opportunities for ROW grant holders to establish plans of operation that address vegetation management, and routine activities generally do not require separate BLM approvals. Most of the ROW grants issued within the past 20 years include such plans of operation, which address vegetation management. The bill's mandatory approval time frame of 30 days for vegetation management plans is not realistic given the potential scope of such plans and the number of ROWs they could cover. Additionally, H.R. 2358 does not provide any flexibility for the agencies to address inadequate or incomplete plans, including such matters as cultural and natural resource needs, emergency or routine maintenance procedures, or procedures for treatment of vegetation adjacent to the ROW. The Department also notes that such a time frame would not allow time for important coordination with local communities.

Likewise, the Department believes that the time frame of 3 business days to respond to requests for treatments is problematic. The mandatory approval required under this provision would preclude the BLM's ability to work with utility companies to modify requests when and where appropriate to ensure treatments satisfy BLM resource management responsibilities and address utility needs in a manner that is safe given current conditions. Furthermore, the Department believes the language in the bill should be clarified in several other ways. For example, the term "adjacent" is not adequately defined.

The Department defers to the Department of Justice regarding the waiver of liability, but notes that this provision may conflict with the Department's existing regulatory authority regarding strict liability, which is a standard term and condition of numerous existing ROW grants. The Department also notes that FLPMA and existing regulations provide the BLM with significant latitude to administer ROWs, and new regulations may not be necessary.

#### CONCLUSION

The BLM values our partnerships with the holders of electrical transmission and distribution ROWs, and we will continue to work toward further collaboration to accomplish our shared goals. We believe that early and coordinated planning and communication are essential to ensure that vegetation management can occur expeditiously and that ROW holders can comply with standards for vegetation management. We appreciate the opportunity to continue to work closely with ROW holders, and the committee's attention to this issue. Thank you for the opportunity to be here, and I would be glad to answer any questions.

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Dr. FLEMING. Thank you, Ms. Mouritsen.

The Chair now recognizes Mr. Mark Hayden, the General Manager of the Missoula Electric Cooperative in Missoula, Montana.

#### **STATEMENT OF MARK HAYDEN, GENERAL MANAGER, MISSOULA ELECTRIC COOPERATIVE, MISSOULA, MONTANA**

Mr. HAYDEN. Good afternoon, Chairman Fleming and members of the subcommittee, and thank Congressman Zinke for his earlier introduction. Thank you also for the opportunity to testify in support of H.R. 2358, the Electricity Reliability and Forest Protection Act of 2015. MEC is a member of the Montana Electric Cooperatives Association and of the Northwest Public Power Association and my comments here today are representative of their views as well.

By way of background, MEC serves the electric distribution needs of approximately 15,000 meters in western Montana and eastern Idaho. The nearly 2,000 miles of distribution line that we maintain deliver energy to some of the most wild and scenic locations in the country, over 280 miles of which cross Federal land.

At MEC we are consistently working to improve safety and system reliability, and vegetation management is a critical component of our program. We strive continually to keep our rights-of-way clear and the adjacent property free from danger trees.

We also work diligently to maintain good relations and open communications with the various Forest Service offices and ranger districts with which we interact. In many cases those offices and the people that staff them live locally, and have a vested interest in the health and welfare of the forest, and it shows.

But this positive situation is not found on all of our rights-of-way managed by the Forest Service. In some cases it can take months and even a year or more to obtain approval on major operations and maintenance activities. These inconsistencies and delays adversely impact our ability to make good, timely decisions locally and place our co-op at unnecessary risk.

In fact, the risk of forest fires as a result of hazard trees is all too real for the West. For example, I know of one member-owned electric cooperative in New Mexico that today faces the very real prospect of bankruptcy as a result of a massive 152,000 acre fire. This fire was caused by just one Aspen tree that fell onto the co-op's Forest Service right-of-way. The Forest Service held this co-op responsible for the cost of fighting the fire, sending the co-op a bill totaling more than \$38.2 million. The co-op has \$20 million in liability coverage.

Mr. Chairman, I would ask permission to have two documents related to this fire entered into the hearing record.

Dr. FLEMING. Hearing no objection, so ordered.

Mr. HAYDEN. Our service area in Montana, like so many parts of the West, has been adversely affected by the mountain pine beetle infestation and the dead and dying trees left in their wake. One of the areas hardest hit is in the Swan Valley, north of Seeley Lake, Montana. In fact, during 2012, 94 percent of the outage minutes at this delivery point were caused by tree failure outside of the right-of-way and contact with overhead lines. Obviously, one of the most effective ways to improve service reliability and mitigate fire risk is to bury that line.

However, converting overhead distribution lines to underground is an expensive prospect, and especially for a small co-op like MEC. So this cannot be standard practice.

After considerable discussion, an application was submitted to the appropriate Forest Service district to bury just over 6 miles of distribution line. However, as the months progressed, our hopes dimmed. Eventually we made an appeal for help from then-Congressman Steve Daines, who brought our situation to the attention of this subcommittee.

As of last week, our request was still not approved, and I called the local Forest Service office to express my frustration. These local officials indicated that the hold up in processing our request was getting a bill to us for cost recovery; and if I wanted to see things change, I should take up my issue with Congress. Two days later, on Saturday, May 16, we received unofficial notice via email that our project was approved and we were authorized to begin construction.



The system is broken. H.R. 2358, as introduced by Congressman Zinke and Congressman Schrader, is a meaningful step toward fixing the problem. The legislation addresses some of my concerns and the concerns of others in Montana about inconsistent Federal agency actions, lengthy delays in response to applications by electric utilities, and accountability for delays relating to eliminating hazard trees and other vegetation and utility rights-of-way.

This is a tremendous first step. I hope that one day the same level of consistency, flexibility, and accountability can be incorporated into the process to amend existing special use permits on Forest Service rights-of-way, especially when system reliability and fire protection are driving factors.

Thank you again for the honor of testifying before this subcommittee and I will be pleased to answer any questions. Thank you.

[The prepared statement of Mr. Hayden follows:]

PREPARED STATEMENT OF MARK C. HAYDEN, GENERAL MANAGER,  
MISSOULA ELECTRIC COOPERATIVE

Good Afternoon Chairman Fleming and members of the subcommittee, my name is Mark Hayden, and I am the General Manager of Missoula Electric Cooperative (MEC) in Missoula, Montana.

Thank you for the opportunity to testify in support of H.R. 2358, the Electricity Reliability and Forest Protection Act of 2015. Missoula Electric Cooperative is a member of the Montana Electric Cooperatives' Association, and the Northwest Public Power Association and my comments are representative of their positions as well.

By way of background, MEC serves the electric distribution needs to approximately 15,000 meters in western Montana and eastern Idaho. The nearly 2,000 miles of distribution line that we maintain deliver energy to some of the most wild and scenic locations in the country—286 miles of which cross Federal land.

At MEC we are constantly working to improve system reliability, and vegetation management is a critical component of our program, both on and off Federal land. We strive constantly to keep our rights-of-way clear and the adjacent property free from danger trees. The cornerstone of this effort is our System Maintenance and Reliability Taskforce or SMART. The SMART program is an integrated maintenance program focused on proactive vegetation management, system-wide installation of wildlife protection wherever possible, and routine equipment inspection and maintenance.

We also work diligently to maintain good relations and open communications with the various Forest Service Offices and Ranger Districts with which we interact. In many cases, those district offices and the people that staff them live locally and have a vested interest in the health and welfare of the forest, and it shows.

A great example of this level of cooperation occurs regularly during the clearing of danger trees outside of our rights-of-way during routine Operations and Maintenance activities. Representatives from MEC and local Forest Service Officials communicate periodically and expectations are understood. As a result, managers and crews can adequately plan for the time and financial resources necessary to complete a project. Another positive example occurred during the summer of 2014 when a power line river crossing was toppled during spring runoff. Once emergency power restoration was complete, we requested burial of the line and approval was granted within hours, as it should be in the case of Emergency Operations and Maintenance activities.

But this positive situation is not found on all our rights-of-way managed by the Forest Service.

In some cases, it can take months or a year or more to obtain approval on Major Operation and Maintenance activities. Such approvals are necessary to assuring electricity service is not jeopardized as a result of work needed on rights-of-way. It is this inconsistency and the unnecessary financial risk placed on my cooperative and other cooperatives that causes me and other co-op managers in the state of Montana significant concern.

In fact, the risk of fires as a result of hazardous trees is all too real across the West. For example, I know of one member-owned electric cooperative in New Mexico that today faces the very real prospect of bankruptcy as a result of a massive 152,000-acre fire. This fire was caused by just one aspen tree that fell onto the power line in the co-op's Forest Service right-of-way. The Forest Service held this co-op responsible for the costs of fighting this fire, sending the co-op a bill totaling more than \$38.2 million. The co-op has \$20 million in liability insurance coverage.

Mr. Chairman, I would like to ask permission to have two government documents related to this fire entered into the hearing record.

For my co-op in Montana, our service area, like so many parts of the West, has been adversely affected by the Mountain Pine Beetle infestation and the dead and dying trees left in its wake. One of the areas hardest hit is in the Swan Valley north of Seeley Lake, Montana. In fact, during 2012 the substation serving this remote country recorded the worst performance of all our delivery points and, according to our records, 94 percent of our outage minutes were caused by tree failure from outside of our rights-of-way and contact with overhead lines. In 2013, that total was 86 percent when excluding severe storms.

One complicating factor for our lines on Federal land in this area is that the Forest Service has required that many of them be constructed out of view using vegetative screening, and thus far off the road when originally installed. This means lack of visibility, inaccessibility, and heavily forested rights-of-way are the norm.

Obviously, one of the most effective ways to improve service reliability and mitigate fire risk is to bury the power line. As you can imagine, each instance of tree/power line contact can pose significant risk of wildfire ignition under the right environmental conditions. However, converting overhead distribution lines to underground is an expensive proposition, especially for a small cooperative like MEC, so this cannot be standard practice. But after considerable internal discussions regarding our situation in the Swan Valley, the decision was made to be proactive by requesting permission to bury approximately 6.1 miles of overhead line on Forest Service land.

In addition to reliability, a major contributing factor in our decision to bury this line was a 2011 Montana Supreme Court decision relating to fire damages. In that ruling the court indicated that a utility could be held liable for restoring unimproved property to its pre-fire condition, including the replacement of mature trees. This ruling had the potential to bankrupt any utility and solidified our decision to move forward.

On December 2, 2013, an application was submitted to the Forest Service district office having jurisdiction over the proposed project, and, just 1 month after submittal, we were notified that approval of our request was expected by June of 2014.

However, as the months progressed our hopes dimmed. Eventually, we made an appeal for help from then-Congressman Steve Daines, who brought our situation to the attention of this subcommittee last year. In preparation for my testimony here today, I spoke with the local Forest Service office regarding my frustration. These local officials indicated that the hold-up in processing our request was getting us a bill for cost recovery, and if I wanted to see things change I should take up my issue with Congress! This comment was made even though they were unaware of my pending testimony on this very issue.

Two days later, on Saturday, May 16, at 4:06 p.m. we received unofficial notice via email that all associated field work has been completed on our project, that our co-op has paid the Forest Service for all associated costs, and that we were authorized to begin construction.

The system is broken, and H.R. 2358 as introduced by Congressman Zinke and Congressman Schrader is a meaningful step toward fixing the problem. The legislation addresses some of my concerns and the concerns of others in Montana about inconsistent Federal agency actions, lengthy delays in response to applications by electric utilities, and accountability for delays related to eliminating problems with hazardous trees and other vegetation on utility rights-of-way.

I hope that one day the same level of consistency, flexibility, and accountability can be incorporated into our process to amend existing special use permits on existing rights-of-way, especially when system reliability and fire prevention are driving factors.

Thank you again for the honor of testifying before this subcommittee and I will be pleased to answer any questions.

The following documents were submitted for the record by Mr. Hayden and are being retained in the Committee's official files:

- Confidential Report by Unified Investigations & Sciences, Inc. prepared for Jemez Mountain Electric Cooperative, Espanola, New Mexico regarding a fire that occurred on June 26, 2011
- Letter to Jemez Mountain Electric Cooperative on January 31, 2013 from the U.S. Forest Service, Albuquerque, New Mexico regarding a notice of indebtedness for a fire that occurred on June 26, 2011

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Dr. FLEMING. OK. Thank you, and thank you for your testimony.

At this point we will begin our questions for witnesses. To allow our Members to participate and to ensure we can hear from all of our witnesses today, Members are limited to 5 minutes for their questions.

However, if Members have additional questions, we can always have additional rounds. I now yield myself the first 5 minutes.

This question is to Mr. Markham, Mr. Benevento, and Mr. Hayden. We hear today, and we often hear this from the other side of the aisle, sort of this reflexive response that if there is a problem with the Federal Government, it is because we are not funding the government enough. Of course, we all know that in the last 6 to 7 years the budget deficit has accelerated to the fastest pace in the history of this Nation. So it is not like we have a lot of extra money in order to throw at problems.

I, on the other hand, believe that the problem is more often poor management and poor accountability. I think we see in the VA a recent example of exactly what I am talking about. We passed a huge bill increasing the funding after all of the scandals at the VA, only to find out virtually nothing has been fixed, and virtually nobody has been fired. So I just simply don't believe that throwing money at the problem is ever, or rarely if ever, the solution.

So my question is this: the Federal agencies before us today discussed their view that inadequate funding is part of the problem. Yet the Forest Service discussed its funding agreement with Xcel. Aren't there also things called cost recovery agreements where the utilities pay up front, or reimburse the agencies for clearing trees?

Mr. HAYDEN. Chairman Fleming, I will address that question. With our application for burial of that line, the response that we received was that getting us the bill for cost recovery was the hold up. Now, we are paying those costs, and my argument to them was get us the bill. We will gladly, not gladly, but we will pay those costs that we owe you to get the job done. That is all we were asking for.

There is inconsistency between that application and the one prior to that that was processed in a relatively efficient fashion. So this notion of cost recovery, yes, it is there. We will pay that bill. The problem was getting us the bill, and that just didn't make sense to me.

Dr. FLEMING. Well, again, I think that makes my point. That underlines and underscores my point that the Federal bureaucracy seems to feel that it is being underfunded, but it doesn't have any problem allowing its inefficiency to run costs up for the private enterprise, or private businesses, or private utilities in this case. So,

better management and faster response would have saved you a lot of time, effort, headaches, and money, would it not?

Mr. HAYDEN. That is exactly correct and so that was after about 9 or 10 months, and much of the field work on our project had actually been completed before the cost recovery agreement was even sent to us, and I guess what troubled me even more was the fact that upon getting that cost recovery agreement and paying the bill, my call last week indicated that they hadn't received the money or it had gotten parked on somebody's desk, apparently, because they had the check for 40 days. Somebody looked for it, found it, and gave us a call and said, you are good to go. So——

Dr. FLEMING. Well, perhaps we should fund the Agency more money so that they have more desks for the check to get stuck on.

Mr. HAYDEN. Right.

Dr. FLEMING. How about the other two members?

Mr. MARKHAM. I would like to respond to that, Chairman. There are two parts of that. First one, the cost recovery agreement, and you heard my testimony where I talked about an archeological study that we are paying for that we expect could be around \$87,000. We have to cut a check for that and it has to be done before any approvals for our project are done.

The other thing, years ago with the BLM, we never had to pay for renewing our permits. Just in the last 2 years, we renewed 31 permits with the BLM and we have cut a check for \$40,000 for that. So we are paying a lot of money to have our infrastructure on the property.

The other thing, going into your question about, is funding part of the problem, I guess my biggest concern about that is that we are talking about infrastructure that has been in place for 40, 50, 60 years. We just want to take care of it.

If it was a new line going in, we can understand the hoops that you have to jump through for that, but this is existing, existing facilities that need maintaining. They are getting outdated, and so from that standpoint, that shouldn't cost anything just to let us maintain our infrastructure.

Dr. FLEMING. A great point. Mr. Benevento, do you have anything to add?

Mr. BENEVENTO. I would echo their statements and just say we have a cost recovery agreement with our Federal partners and often there are issues about whether paying up front or paying after the work is done, and checking to make sure that the work is done correctly, which causes us some time and difficulty, and I think causes them some issues as well. So——

Dr. FLEMING. Thank you. My time is up. I yield to the Ranking Member for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman. I just want to respectfully push back a little bit on this idea that because we have had a deficit over the past decade, there must be plenty of money to go around the Federal Government, so that can't be part of the discussion or part of the solution. These agencies we are talking about now were not part of what landed us in a \$17 trillion national debt, or the deficits we have been dealing with. I think if you asked them about their non-fire-related budgets over the last 7 years, decade or so, you would find that it has been pretty tight.

What did land us in this problem, of course, is that we launched a couple of wars, and for the first time in our country's history, the good folks here in Congress decided instead of raising taxes to pay for the wars that they authorized, we would for the first time cut taxes while going to war, turning any semblance of fiscal conservatism or fiscal responsibility on its head. That is why we are here today, not because these agencies have had plenty or too much money to spend.

But I do want to ask you, Mr. Smith, with respect to your agency, what are the impacts of fire borrowing on your resources and how has that impacted your ability to put people in the field to process right-of-way maintenance requests?

Mr. SMITH. Congressman, I think that you hit a sensitive point there. Certainly, we want to appreciate all of the money that Congress appropriates to us, but, certainly, we have to make decisions in terms of when we are fighting fires it certainly affects resource budgets. If we are called upon to transfer funds, certainly, that is going to affect projects that we might have been doing, whether it is a fuels treatment or something else. So it has a tremendous effect on us when we have to pull those resources from stuff that we have already planned. And that certainly affects staffing capacity as well as having enough authority to get those cost recoveries that we have been talking about here later.

Mr. HUFFMAN. I would ask you also, Mr. Smith, about the danger tree provision in this bill. Do you have concerns that that definition of danger tree, the new definition as proposed, would be broad and could lead to unnecessary removal of valuable vegetation and potentially have unintended consequences?

Mr. SMITH. Yes, we think that if a tree is imminent, or what we call an imminent danger, we allow them to cut that down even without prior approval and then they can come back and tell us later that that has been done. The danger tree provision—we want to make sure that the utilities are talking to us so that we can make a determination as to whether there are some problems that we are having with that tree, whether there are some public safety concerns, or whether there is some type of sensitivity in that area.

We would like a little more flexibility so that we can manage that. If it is certainly a danger tree, we will certainly give them the opportunity to make those corrections and remove those trees.

Mr. HUFFMAN. Thank you. I know you have expressed some concern as well about the liability shift as proposed in this legislation. But I believe I heard Mr. Benevento say something that caught my attention. I found it potentially very significant. I think I heard you say that at the very least you should have a gross negligence standard for these projects that you might do on your own dime in coordination with the Forest Service.

Did I hear you correctly that you could accept a gross negligence standard as opposed to a straight shift of liability?

Mr. BENEVENTO. For off-right-of-way work is what I was discussing. So when we are doing—the off-right-of-way work is a responsibility of the Federal land managers to clear and manage, because for a variety of reasons that is not occurring.

So we are willing to volunteer—it is like a Good Samaritan Law, Senator Udall had a Good Samaritan Law several years ago. This

is sort of similar to that in the sense that we would be willing to do it. We would be willing to pay for it. We would be willing to take direction and get approval from the Federal land managers, but the liability standard, in order to incent us to do that would have to be a gross negligence standard.

Mr. HUFFMAN. Understand. Thank you. I found that to be significant and very productive and maybe something folks can work on as this goes forward. But I just want to ask my last question of Ms. Mouritsen. You spoke to the lack of flexibility in your agency's ability to collaborate and work with utilities once they submit a plan to you under this bill. Could you elaborate a little bit on that? Do you feel like some improvements are needed in that regard?

Ms. MOURITSEN. Yes, we agree with the intent of this bill to develop these plans. We were just afraid when we read this, where it said they would turn the plan in and we would have to approve it in 30 days—

Mr. HUFFMAN. Right.

Mr. MOURITSEN [continuing]. That there wouldn't be time. We might have some really good comments that we would like to discuss with the company and we—

Mr. HUFFMAN. You might be able to make the plan better.

Ms. MOURITSEN. Make the plan better, and that is what we would be afraid wouldn't be able to happen.

Mr. HUFFMAN. In my 5 seconds left—from the two government officials here, we currently handle rights-of-way and special use permitting in that manner, which does create inconsistencies. Will both of you agree that if we can get this right, some programmatic approaches to managing these issues might be beneficial for everyone?

Mr. SMITH. We would agree with that.

Ms. MOURITSEN. Sure, yes.

Mr. HUFFMAN. All right, thank you, and thank you Mr. Chair.

Dr. FLEMING. Mr. McClintock is recognized.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. It has been observed that one of the many differences between the private and public sectors is that the private sector attracts capital by becoming more efficient and more innovative. The more productive they become, the more capital they attract.

The public sector works exactly the opposite. They attract capital by being less efficient, less innovative, and then coming here and demanding more money to cure these inefficiencies.

My observation has been, particularly with respect to the National Forest Service, that as the staff and spending keep going up, and up, and up, the performance and efficiency keeps going down, and down, and down. It seems that the more bureaucrats we add, the more cumbersome the bureaucracy becomes. I would like to ask Mr. Markham, Mr. Benevento, and Mr. Hayden for their observations on this phenomenon.

Mr. MARKHAM. Well, I will go ahead and jump in first. I think what is important for us, or what has happened with us is, again, our infrastructure is aging. Infrastructure across the country is aging, and so—

Mr. MCCLINTOCK. Are you finding the bureaucracy becoming more responsive or less responsive to the need for removal of these trees?

Mr. MARKHAM. It is definitely, the bureaucracy has gotten worse here.

Mr. MCCLINTOCK. Mr. Benevento, better or worse?

Mr. BENEVENTO. I hesitate to over-generalize. I would go with about the same.

Mr. MCCLINTOCK. Mr. Hayden?

Mr. HAYDEN. I would qualify it by saying I am concerned that there isn't turnover at so many levels at our local staffing positions that I am worried about the lack of consistency as we move forward. And one other—

Mr. MCCLINTOCK. Do you think that the bureaucracy behavior would change if we went for a pay-for-performance system—

Mr. HAYDEN. I can tell you this—

Mr. MCCLINTOCK [continuing]. Or whether they are paid based upon the applications they process?

Mr. HAYDEN. Production might go up not—

Mr. MCCLINTOCK. Mr. Benevento?

Mr. BENEVENTO. Well, that is the way we do it at Xcel, and it works for me.

Mr. MCCLINTOCK. Mr. Markham?

Mr. MARKHAM. Absolutely.

Mr. MCCLINTOCK. We were just told that, hey, no big deal, you can get rid of the danger trees. Just come back and tell us later. Is that so, Mr. Markham?

Mr. MARKHAM. I am sorry, I didn't catch the question.

Mr. MCCLINTOCK. The Forest Service just testified, that you can get rid of the danger trees. Just come back and tell us later. Is that the way it works?

Mr. MARKHAM. No.

Mr. MCCLINTOCK. Mr. Benevento?

Mr. BENEVENTO. I think I am going to show you why there is inconsistency. We actually have an arrangement where we can get rid of our danger trees and then notify them afterwards, but apparently that is not the case nationally.

Mr. MCCLINTOCK. OK. How about Mr. Hayden?

Mr. HAYDEN. Yes.

Mr. MCCLINTOCK. During the last 30 years, we have seen an 80 percent decline in the timber harvests from the National Forest Service lands. Those are public assets that the National Forest Service, by the way, under the Department of Agriculture is responsible for managing for the good of the American people, as well as the good of our national forests.

As we have seen that decline in timber harvest, we have seen a concomitant increase in acreage destroyed by catastrophic fire. I wonder if we returned to sustainable yields that we had 30 years ago, where we were removing excess timber from the public lands before it burned in catastrophic fires, and we are generating revenues from those sales, I would like to know from the National Forest Service, how much money would that mean to the Service to manage our public lands better?

Mr. SMITH. Congressman, I am not sure I have a definite answer for that, but we would be willing to look at it.

Mr. MCCLINTOCK. Well, you are responsible for the management of these resources. I would hope that you would know how much those resources were worth. I mean, we were harvesting at sustainable levels 30 years ago. We had a steady stream of revenue as a result of those activities. The Forest Service was a net income generator for the U.S. Treasury, and we had much healthier forests as a result.

Mr. SMITH. I agree with that. I will certainly look into that and get back to you. I don't have those figures.

Mr. MCCLINTOCK. I would like to ask one final question of the utilities representatives. You work with the public land; on the Federal Lands Subcommittee, we have received reams of testimony over the deterioration of the health of our national forests over the past 30 years, not coincidentally the same 30 years that the environmental left has dominated our policy, our laws, and our litigation on this subject.

Would you say our national lands are healthier or less healthier than they were 30 years ago? One word answer from each of the utilities.

Mr. MARKHAM. I will answer less.

Mr. MCCLINTOCK. Mr. Benevento?

Mr. BENEVENTO. I don't know what shape they were in 30 years ago, but we know that in Colorado, we have a lot of issues with respect to the health of our forest.

Mr. MCCLINTOCK. Mr. Hayden?

Mr. HAYDEN. Less.

Mr. MCCLINTOCK. Thank you.

Dr. FLEMING. The gentleman yields. The Chair recognizes Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. Mr. Hayden, Mr. Markham, and Mr. Benevento, a question for you. Can you describe the differences between the Federal Government and state or local governments with regard to how well they handle vegetation management?

Mr. MARKHAM. Well, I believe we have a much quicker response from the local level or the state level on something like this than working with the Federal level.

Mrs. LUMMIS. And why is that, do you think?

Mr. MARKHAM. Well, it is my opinion that we can get in contact and have better communication, and if something is not going good with my people that handle this, they could come to me and I can make some contacts with the people I know at the local or the state level.

Mrs. LUMMIS. Mr. Benevento, what has your experience been?

Mr. BENEVENTO. I think the local level is where we get the best response.

Mrs. LUMMIS. Let me ask Mr. Benevento while I have you. Are there instances where Federal land management agency partners with a utility to assist in vegetation management off of rights-of-way on Federal land?

Mr. BENEVENTO. We do. We have been talking with our Federal partners about doing that and one of the arrangements we have



discussed is paying them, again, to do the work, or what we prefer is have them do the work and then we reimburse them for it, which is a partial solution to it.

But it is more efficient, we think, if we do it. We have crews out there. We have crews working. We can do the work more efficiently. And there is also a question of payment. One of the issues we have had is they want to be paid up front, and we would prefer to pay them after the work is done and then reimburse them.

So again, we would prefer to do the work and we are willing to accept some level of liability for it in order to try and get it done more effectively.

Mrs. LUMMIS. Would you choose to pay them to do it because of the liability standard? Is that the main driver?

Mr. BENEVENTO. At this point, yes. At this point what we believe is strict liability if we go off the right-of-way and it is a little unclear—the law is a little unclear in this area, but we are unwilling to go off the right-of-way based upon what we believe is a strict liability standard if we do so. If that were to change, we would be willing to do the work at our cost.

Mrs. LUMMIS. So is it fair for me to assume that the liability standard may in some instances at least, deter utilities from assisting Federal land management agencies in clearing fire hazards?

Mr. BENEVENTO. Off of the right-of-way, it certainly acts as a disincentive for us to do it, yes.

Mrs. LUMMIS. Again, for Mr. Markham, Mr. Hayden, and Mr. Benevento: under current law, even if the Forest Service or the BLM negligently failed to do their job by not allowing utilities to eliminate hazard trees and something goes wrong, do you or your customers have to pick up the tab for it if it is actually the Federal agency that is negligent?

Mr. MARKHAM. Any costs like that come right back into our rate base and, ultimately, they are paid for those costs by our members.

Mrs. LUMMIS. So you do assume those costs, even if the Federal agency is negligent.

Mr. MARKHAM. Right now, and I cited the example with Midstate Electric Cooperative. It requested removal of a danger tree that was near the right-of-way, and the tree caused a forest fire and they were denied a request from the Forest Service. They ended up having to pay several hundreds of thousands of dollars.

Mrs. LUMMIS. Mr. Hayden, can you jump in on this? Do you have an opinion about this line of questioning?

Mr. HAYDEN. I don't know that I can, I assume that we would be held liable. In Montana, we are especially concerned. The Montana State Supreme Court has issued a ruling in 2011 that stated that utilities would have to replace the forest as it was, so put mature trees to replace the forest. So obviously, we are very, very concerned about that. It has had the effect of possibly bankrupting one of our co-ops in the state of Montana.

In the legislative session that just ended in the state of Montana, we were successful in getting language in a bill that said that the value could not exceed the pre-fire fair market value of unimproved property. So the question of liability is huge to us in the state of Montana, especially given the fact that they were requiring the replacement of mature trees, not small trees.

Mrs. LUMMIS. Well, Mr. Chairman, I will yield back. If we have another line of questioning, I do want to ask about the fairness of this and what might be a better system. Thank you, Mr. Chairman.

Dr. FLEMING. Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman. And thanks to everybody on the panel for being in this discussion. It seems like we are legislating common sense. I would think that everybody here would be in agreement that no one wants to see fires, no one wants to see power interruptions and we have a common goal. And I hope that is a goal of everybody that is shared.

For Mr. Smith and Ms. Mouritsen, excuse me if I butcher your name, both of you testified that each of your agencies have field guides or handbooks for government employees to follow when it comes to the electricity rights-of-way on Federal land. But just in the last couple of discussions, we have heard that there seems to be a little inconsistency between existing agencies.

So will you tell me about these documents? Are they discretionary? Are they hard and fast? Could you talk, both of you, a little bit about that.

Mr. SMITH. Congressman, with the desk guide for the Forest Service, we recently have that out, that is the guideline telling the field how to deal with utilities, how to deal with right-of-ways. It is simply a guide right now. It will eventually be put into an interim directive for permanent manual direction, but right now it is a guide.

But we certainly work with the field. And we think everybody has a good idea what this is about. My staff has certainly been working with the staff around the regions, in the forests, to help them understand what that guide is about and what that is. We have done extensive training working with the utility companies as well as the Forest Service itself.

Mr. NEWHOUSE. So there is some discretion allowed within that?

Mr. SMITH. It is a guide right now, yes.

Mr. NEWHOUSE. Thank you.

Ms. MOURITSEN. We have a similar situation. We have policies and guidance, and they contain procedures for working with the right-of-way holders. But there is some room for discretion and exactly how to craft, say, the vegetation management plan because conditions are different in each area. So it depends a little bit on the local situation.

We also do a lot of training. We partner with the industry in training and with the Forest Service and try to train our people and bring as much consistency as we can.

Mr. NEWHOUSE. Thank you. So, Mr. Markham, Hayden, and Benevento—

Mr. BENEVENTO. Benevento.

Mr. NEWHOUSE. Benevento, excuse me. The Administration is insinuating that the policies in these field guides—I forget the term you called them, Mr. Smith—are in place, both agencies have guidelines available. So, my take is that the position is that this bill is a duplication, and is not necessary. Could you describe or help me understand what positive things that this bill would provide you and what kinds of consistency that could be brought about by passing this legislation?

Mr. BENEVENTO. I think you have used the word that is most appropriate which is consistency. You know, we were just talking here about the ability to take down a danger tree that could potentially come into contact or arc with a power line. And we can do that right now. We can immediately go in and get that tree down. Then we just have to inform the Forest Service afterwards. I don't think that is true of all of us on the panel.

So I think one of the things it would do is establish policies and procedures that could be undertaken and that would make them sort of common-sense policies and procedures that are nationally applicable.

Mr. HAYDEN. I would just add to that that this turnover that I talk about at the local level at Forest Service offices, the training requirement within the bill is very important because that will allow for consistency across all offices and not just certain areas.

Mr. NEWHOUSE. Good point. Thank you.

Mr. MARKHAM. Yes, that was my similar answer. The training is what is really critical there, so that we have the consistency. There are a lot of different interpretations of the standards.

Mr. NEWHOUSE. Thank you. With that, Mr. Chairman, I will yield back my time.

Dr. FLEMING. The gentleman yields back. I have a couple more questions. Would you like to do another round? It may only be you and I.

Mr. HUFFMAN. As you wish.

Dr. FLEMING. OK. Sure. Again, I recognize myself for 5 minutes. Mr. Markham, Benevento, and Hayden, the Forest Service and BLM say that parts of this bill are redundant with actions already going on at the local Forest Service and BLM levels. Then why is this bill necessary?

Mr. BENEVENTO. I think to bring about the consistency in the management of the forest and to take some of the good practices, as I have talked about, our ability to deal with, for example, danger trees. I think that the potential use of integrative vegetation management also provides some benefit that could be legislated that could be productive.

Mr. MARKHAM. Well, the way I would answer this is, again, consistency, we have to have consistency. I talked about the differing interpretations and application of the standards; this legislation gives us consistency. It gives us accountability also, and that is pretty significant.

The other thing is that we deal with different areas across the state. They deal with different standards. In one area they can do things one way, and then you come down into our area and it is done completely different. So that is why I support and believe this legislation is really needed.

Mr. HAYDEN. In my opening comments, I mentioned that I think this is a great first step. We have been looking to modify our special use permit to bury some line. I should have brought this up from the earlier question about this transfer of liability. If the Forest Service hasn't acted upon our request, I know of nothing that eliminates liability from us. So we have submitted an application for a modification to our special use permit.

I think this is one of those things that if there are inefficiencies, if there is lack of responsiveness, it is not meshing with what they are saying is happening within their respective departments.

Dr. FLEMING. OK. I yield my time to the Ranking Member.

Mr. HUFFMAN. Thanks, Mr. Chairman. For my final thoughts or questions, I guess my takeaway here is that I definitely am hearing the elements of a consensus. They are all here in this conversation. Some of them are in this bill, and there are some pieces in this bill that I think need more work and are perhaps needlessly controversial and not necessarily even essential to getting us to this possible solution. The idea of the programmatic approach to what is currently being done on a case-by-case, patchwork basis makes a lot of sense. That ought to be something we can work on together.

So my hope is that we can go forward from here, take these elements of consensus and build something that could be a strong bipartisan product and not let the wedge issues and, just frankly, some of the ideological crossfire that you, unfortunately, were subjected to get in our way.

We are going to have to address the fact that at some point when we direct the government to do things, even coming up with a programmatic new solution, it costs money. In fact, programmatic approaches cost more money up front than the case-by-case type of approach. So we have to start giving these public agencies the funding they need to do the many things we ask of them, instead of letting wildfires consume not only their trees but their budgets. My hope is we can continue to draw the connection between the fire borrowing solution and all these other things that we would like to see happening on the ground.

Thank you for the hearing, Mr. Chairman. And thanks to the witnesses.

Dr. FLEMING. I would like to thank our witnesses for their valuable testimony. Members of the subcommittee may have additional questions for our witnesses. We would ask you to respond to these in writing. The hearing record will be open for 10 business days to receive these responses.

If there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:39 p.m., the subcommittee was adjourned.]

